







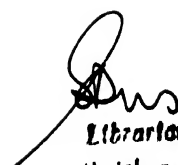






# The Great Mhineboongyee Case

1865

  
Librarian  
Krishna Public Library



THE  
GREAT MHINELOONGYEE CASE

IN THE COURT OF THE RECORDER OF MAULMAIN.

---

*Regular Suit No. 153 of 1865.*

**PLAINTIFFS.**

KO KHINE, of Maulmain, Timber Trader ;  
THOMAS DUNLOP FINDLAY, of Glasgow, Esq.,  
JAMES FINDLAY, of Rangoon, Esq., and  
JOHN MCCALL, of Maulmain, Esq., who carry on trade and business at Maulmain aforesaid as Merchants and Agents, under the name, style and firm of Todd, Findlay & Co.

*Versus*

**DEFENDANTS.**

ROBERT CAMPBELL BURN, of Maulmain, Merchant ;  
MOUNG SHOAY GAN, of the same place, Timber Trader ; and  
RICHARD SNADDEN, also of the same place, Merchant.

---

**PLAINTIFFS' STATEMENT.**

Suit for 52 logs of teak timber in specie marked  
[ 99 ] being a portion of 609 logs hereinafter mentioned. Suit valued at Rupees 3380. Cause of action arose in or about the month of July 1865.

Plaintiffs state—That MOUNG KHINE, the first plaintiff, went to the Mhineeloongyee forests, where he cut with the permission of the Chief of Zimmay, 609 logs of teak timber, as appears by the permit hereto annexed, and marked A, and afterwards paid to the aforesaid Chief duty for the same, as appears by the document hereto annexed and marked B. After having paid the duty, first plaintiff worked and dragged the same into the river.

That after the duty had been paid by the first plaintiff, Robert Campbell Burn and MOUNG SHOAY GAN, the

first and second defendants above named, proceeded to the forest, with a large retinue of armed followers, and without permission or authority supermarked plaintiff's timber wrongfully with the marks M and ငါ့ဝံ့

That the aforesaid 52 logs of teak timber are now at Kadoe, a place within the jurisdiction of this court, and have been entered there by Richard Snadden, the third defendant, as agent for the first defendant, but who in fact is his partner, and has great interest in the said timber, and the said timber is now in the possession of the third defendant, who as such agent refuses to deliver the same or any portion thereof to the plaintiffs.

That second plaintiffs, Messrs Todd, Findlay & Co., are made parties to this suit, as the said timber, together with other timber which has not yet arrived, has been sold to them, as per document marked C hereto annexed.

That the said timber is valued at Rupees sixty five each log.

That as delivery is withheld as aforesaid, plaintiffs pray that the said defendants be summoned to appear before this court, and that a decree be passed against them directing them to deliver to plaintiffs the aforesaid timber in specie, with all costs of suit, and also that pending the final determination of suit the said timber be placed under attachment, and further that the summonses for Robert Campbell Burn and Moung Shoay Gan may be served on Richard Snadden, the agent of the said parties. Dated 13th September, 1865.

W. T. LAW, *!*  
Plaintiffs' Advocate.

MOUNG KHINE.  
JOHN MCCALL,  
for self and partners.

### A.

ORDER of the Chief (Shoay Nan Shing) of Zimmai for the information of all Thit-goungs. That Thit-goung Moung Khine having appeared before us with presents and applied to us for permission to work out timber in the Mhyneloongyee Forest, as far as Mainlahgyee Creek, we permitted him to work, within our territory, for the year 1226—extending from Mhyneloongyee, to the east as far as the Mainlahgyee Creek, and to the west as far as he pleases. That no Thit-goungs, whether he be a Kullah (western Foreigner) or a Burman or Taling, or a Shan, or a Kareen, shall take possession of the Timbers, cut, work-

ed, or dragged by Moungh Khine, nor shall he be in any way annoyed or opposed by them. If other Thit gounghs shall desire to work out timber, in the Forests, they shall be introduced into our presence, by Moungh Khine, when we may permit them to work, if we see fit to do so. The duty on each log is Rs 4-8. On the arrival of the overseer (or superintendent) of the Forests, the Thit-gounghs shall produce their orders (or permits) to him—and they who do not wish to cut and work shall return their permits. The logs shall be marked and removed only after the overseer shall have taken the accounts of them. At the time of paying the duty, the Thit Gounghs shall give up their former order (or permits), and those who wish to continue on with the working of the timber will have new permits granted to them so that the work of the year 1226 may not be mixed up with the work of 1227. Any Thit Gounghs who shall mark or remove their timber before they are registered by the overseer (or superintendent) shall be liable to confiscation of property—timbers and elephants, and also to severe punishment on their persons.

Translated from the Siamese into Burmese by

Signed MOUNGH BAIN.

„ KO NAN TSEE.

Translated from the Burmese,

STEPHEN M. MCKERTICH,

*Translator.*

September 9th, 1865.

## B.

ORDER of the Viceroy of Zimmai for the information of the Commissioner and other Court Officers and the Timber Merchants and Thit Gounghs at Maulmain.

That the Thit-Goungh Moungh Khine having cut and worked the Timber in the Mhineloongyee Forests, and obtained 609 logs, has paid us Rs. 2740-8 as duty, on the 3rd day of the waxing of the Moon Wah Goungh, B. Y. 1226 (August 24th 1864) in the presence of Moungh In-gah, Moungh Aik-Pyin, Moungh Mat Doot, Moungh Bike, and Moungh Mhone.

That we permitted him to stamp his timber with the Mark ၄၄

and to take them down to Maulmain, where on their arrival, he shall not be annoyed or obstructed, but be allowed to sell them, in which ever way he pleases.

The receipt for the amount of duty on Tuesday (Thursday?) the 1st day of the waxing of the Moon Taw-tha hn B. Y. 1226 (September 1st, 1864.)

Translated from the Siamese into Burmese by

Signed MOUNGH BAIN,

„ KA-MAN PYUI-NGYA.

A true Translation from the Burmese,

STEPHEN M. MCKERTICH.

Maulmain, 5th September, 1865.

## AGREEMENT.

*Maulmain, 23rd May 1865.*

It is this day mutually agreed between Ko Khine, Forester of Kadoe, and Todd, Findlay & Co. of Maulmain, that the former having 609 logs of teak timber on which he paid duty to the Chief of Zimmay last year, at the rate of Rupees 4-8 per log, and which have been felled, dragged, and launched by people and elephants employed by and at the expense of the said Ko Khine, under a permit of the Chief of Zimmay (Zimmay Shoay Nan Shing) and which timber is expected to arrive at Kadoe during the present season.

That Messrs Todd, Findlay & Co do purchase and hereby acknowledge having purchased the said 609 logs from the said Ko Khine, at the rate of Rupees fifty per log, inclusive of expenses that may be incurred upon the said timber on the way down from Kyodan to Kadoe, which are to be deducted by Messrs Todd, Findlay & Co from the purchase money.

The conditions of purchase are as follows —

1st. That half the quantity of the above logs shall measure in length 25 cubits and upwards, and in girth measured at the middle of the logs 4 cubits and upwards

2nd. That the remaining half shall consist of logs not less than 20 cubits in length, and that the proportion of logs above 4 cubits in girth shall be greater than of the longer logs.

3rd. Very crooked or defective logs may be rejected by Todd, Findlay & Co.

4th. Should the Timber on arrival fall short of the above conditions and prove of inferior quality, then Messrs Todd, Findlay & Co shall have the option of accepting the timber at a reduced and fair rate, or of rejecting it, but they shall have a lien upon it for all advances made in consequence of this purchase to Ko Khine.

The timber bears the mark

99

In token of good faith, Ko Khine has presented at the office of Messrs Todd, Findlay & Co the Zimmay Mengyee's forest permit and the receipt from the same authority for the duty paid on the above 609 logs, dated 2 Decrease of Wah Goung 1226, corresponding with the 20th day of August 1864.

In addition to the above 609 logs, Messrs Todd, Findlay & Co. hereby also acknowledge having purchased, and Ko Khine hereby also acknowledges having sold to them, all that arrive at Kyodan during the present season of 100 logs purchased by Ko Khine from Moung Yan Gain, who worked them out of the forest, and paid duty on them to the Chief of Zimmay and 600 logs of the present season's timber, felled and dragged, on the same conditions as the above 609 logs, and on which duty is still to be paid to the Chief of Zimmay by Ko Khine. The terms on which these are purchased are the same as for the first 609 logs.

**Maulmain**  
**31st May, 1866.**



## Regular No. 153 of 1865.

Mr. Nicolson for the plaintiff objecting to the reception of the defendants' statements on the ground that they are printed, and in consequence a fraud on the revenue laws.

The Court is of opinion that the word written has received a judicial interpretation, which makes it include printed, and that there is nothing to narrow the construction in the case of the Code of Procedure.

J. PITT KENNEDY.

I agree,

D. BROWN,

*Offg. Commissioner.*

---

FIRST DEFENDANT'S STATEMENT.

R. C. BURN, the 1st defendant above, by his advocate, Donald Macleod, appears to answer, and says:—

1st. That the cause of action did not arise within the jurisdiction of this court.

2nd. That this 1st defendant, at the time of the commencement of the suit, did not dwell, or carry on business, or personally work for gain, within the limits of the jurisdiction of the court.

3rd. That this court hath not, as against this 1st defendant, jurisdiction in the subject matter of this suit.

4th. That the cause of action or foundation of this suit is the alleged deprivation of plaintiffs, or wrongful ouster by defendants, of the plaintiffs of possession of certain logs of timber in the Mhineleongyee forests: defendant, therefore, pleads that by the plaintiff and the facts therein averred, that the cause of action did not occur about July, 1865, but sometime previous thereto, and in a foreign state.

5th. That the present 1st plaintiff, on the 7th August 1865, filed a suit with the others in the district court of Maulmain, which was transferred and was pending, but withdrawn in this court, and known as Civil Regular 156 of 1865, when this action was filed, and in that suit 1st plaintiff sued for declaration of right to 600 logs of timber from the Mhineleongyee forests, and 1st defen-

dant says, that the present action is for a portion of the claim in that other suit arising from the same cause of action, and as such, under Section VII, Act VIII of 1859, the present suit cannot be maintained.

6th. That the 1st plaintiff has by contract parted with the property in the 52 logs sued for, and 1st defendant saith, therefore, that he, 1st plaintiff, cannot proceed as laid in this action.

7th. That the 2nd, 3rd, and 4th plaintiffs, from their own shewing, are merely assignees of a chose in action, and they cannot, therefore, maintain the present suit as laid by them.

8th. That 1st defendant, having long since parted with possession of the 52 logs now sued for in specie, hath it not in his power to deliver the same to plaintiffs: nor is there any alternative prayer in the plaint. This defendant says he made over the said logs with others to 3rd defendant, who received them in fulfilment of the agreement entered into between them, 1st, 2nd, and 3rd defendants. The said logs are held by 3rd defendant as coming from the Mhinelooogyee forests, as having been brought therefrom by 1st defendant to the frontier of this country, and thence from Kyodan by 3rd defendant's people, without let or hindrance by any one, and 1st defendant was in no way interfered with in foreign jurisdiction in bringing them, the said logs, to the frontier of this country.

9th. That the so-called Chief of Zimmay had no authority by the laws of Siam to allow 1st plaintiff to cut and drag any timber in the Mhinelooogyee forests, during the period for which the same had already been granted to Shoay Gan, from 1220 S. E. to 1230 S. E.

10th. That the Exhibits, A and B, have no such attestation as to enable 1st defendant to admit their authenticity and genuineness, and therefore puts plaintiff to the proof of the same.

11th. That the 1st plaintiff never floated, worked, cut, or dragged, the logs now claimed, or any of them; but the 1st and 2nd defendants, at great expense and in the exercise of their unquestionable right so to do, worked and floated the whole of the logs, the subject of this

suit, from Mhineloongyee to Kyodan, and thence to Kaddoe.

12th. That the plaintiff's marks were wrongfully put on each and all of the logs now claimed.

13th. That no duty was paid to any properly constituted authority for these logs in the Kingdom of Siam.

14th. That the mark (๗๐๕) is this, 1st defendant's, own registered mark; that *M* is the 3rd defendant's registered mark.

15th. That none of the plaintiffs ever had, nor have any lawful claim to the logs used for, or any of them; the whole having been cut in the Mhineloongyee forests by Shoay Gan, between 1220 S. E. and the present time, a period for which 1st defendant and 2nd defendant had a grant or permission, for the same from the hereditary owner, Chow Rajapoot, from 1220 to 1230 S. E. inclusive. This grant originally conferred on Shoay Gan (2nd defendant) after passing from Shoay Gan to Lenaine, from Lenaine to Snadden, 3rd defendant, and from 3rd defendant to Johnstone, then reverting back to Snadden, admitted by plaintiff in 156 of 1865. The said grant and the right under the same were assigned by Snadden (3rd defendant) to 1st and 2nd defendants for valuable consideration, subject to 3rd defendant's lien thereon for monies due and growing due and advances made, and to be made, for working the said forests. That during 1226 S. E., within the period covered by the said grant of the forests, the present plaintiff and others, taking advantage of certain misunderstandings and quarrels at that time between Shoay Gan and the so-called (by plaintiffs) Chief of Zimmay, and in fraud of the rights and privileges conferred by the hereditary proprietor of the Mhineloongyee forests, under the grant before referred to, from 1220 S. E. to 1230 S. E., the plaintiff and others, well knowing such to be the case, unlawfully, and without sufficient authority, trespassed in the said forests, marked timber to which they had and have no right whatever, removing, during the absence of the rightful parties, a considerable number of logs.

16th. That Shoay Gan and 1st defendant proceeded to Bangkok, and there, in due form of law, and from the duly constituted authorities of the kingdom of Siam, and through Her Britannic Majesty's Consulate, obtained the distinct recognition of Shoay Gan's rights to the said forests from 1220 to 1230 S. E.

17th. The so-called Chief of Zimmay, under whose authority the plaintiffs now claim, was himself at Bangkok, and admitted before the Royal Court at Bangkok the right of Shoay Gan, bound himself in consideration of the present 1st and 2nd defendants discontinuing the prosecution of their suit against him at the said Royal Court of Bangkok, not to allow any other, except 1st and 2nd defendants, to work the said Mhineloongyee forests.

18th. If, therefore, the exhibits A. and B. relied on by plaintiffs were issued by the said Chief, or by his authority—for be it observed they are not signed by him—then 1st defendant says they were so issued without sufficient authority, and were and are of no force and effect as against, but in fraud of, the rights of 1st and 2nd defendants contrary to the laws of Siam, issued in bad faith and such as should not, and as 1st defendant believes they will not, be recognized by this court, the same being in violation of the said so-called Chief of Zimmay's written obligation signed by him in person before Her Britannic Majesty's Consul, and bearing the official approval, seal, and signature of His Royal Highness Prince Krom Luang Wongsa, the Prime Minister of the Kingdom of Siam and Supreme Governor and highest authority under the King of Siam, of the North West division of the kingdom, and in which the said Mhineloongyee forests are situated, and from which the said 52 logs now sued for were brought into British territory, without question of the duly established authorities of Siam, and at Kyodan made over to 3rd defendant, who caused the same to be brought and entered at Kadoe, the Timber Revenue Station of this Division of British Burmah.

19th. No complaint hath been made by any of the plaintiffs at Bangkok against this defendant, although Her Britannic Majesty's Consul is there armed with sufficient authority to enquire into and to redress the

wrongs of British subjects as between themselves, under the Treaty between Great Britain and Siam, and 1st Defendant says from the exhibits filed herewith, and from the evidence he will bring to prove his case, that the right and title to property in timber in the forests of Mhineloongyee, from 1220 to 1230 S. E., has been decided in favor of Shoay Gan, 2nd defendant, through whom and in virtue of the assignment by Snadden above set forth, 1st, 2nd and 3rd defendants are now entitled and by a competent tribunal in the foreign jurisdiction of Siam, and that the same should be conclusive, although incidentally now brought in controversy in another state.

20th. 1st defendant denies any partnership with the 3rd defendant, denies having at any time violated any law by any such overt acts as averred by plaintiffs, with armed forces, &c. 1st defendant also says Her Britannic Majesty's Consul at Bangkok is the proper authority to punish British subjects for such criminal acts as are set forth by plaintiffs under the Treaty before referred to, but up to the present time 1st defendant says that notwithstanding being guided for redress to the said British Consul by the Chief Commissioner of British Burmah, and by the Commissioner of this Division of British Burmah, that 1st plaintiff, nor any of them who acted with him, have made any complaint against 1st defendant, who is, and has been, and will be, prepared to meet the plaintiffs, or any of them, before Her Britannic Majesty's Consul, whenever they may deem it right to complain against him at Bangkok.

21st. 1st defendant placing the value of the logs and averments of plaintiffs, one and all, in issue, save and except so far as the same may be in unison with his, 1st defendant's, allegations, claims that the suit as against him may be dismissed and with all costs.

R. C. BURN, by his Attorney,  
RICHARD SNADDEN.

DONALD MACLEOD,  
1st Defendant's Advocate.  
30th September, 1865.

**X. O. R. A.**

COMMUNICATION from the Chow Rajapoot of Zimmay (here follows his titles &c., to the Commissioner, Deputy Commissioner, and to all the other officers in the Commission of the country of Maulmain). I, (the Chief), beg to state that the Mhineoongyee forest from Mhineoongyee as far as or down to Mhineoongyee Chyoung (creek) belongs to me, and I had appointed Moungh Shoay Gan to take care, sell, fell, &c., &c., all teak timber from the year 1220 to 1230, and that during which time any person desirous of cutting in the Mhineoongyee forest must apply to Moungh Shoay Gan, who is empowered to give permission to such applicants, and no person will be allowed to cut and take possession without reporting and communicating with Moungh Shoay Gan.

I beg to report the above for your information.

Translated from Siamese to Burmese by Moungh Nyn on the 3rd waxing of Thadinkyoot, 1221

Dated, 29th September, 1859.

Translated into English by

D. A. NICHOLAS.

5th November, 1859

---

**Z.**

*Original in Siamese signed by the Chief of Zimmay, and approved of by Krom Nung Wongsu, and attested by H. B. M. Consul.*

---

*Translation.*

Choa Kha Wilowot Rat Suriwong, Ruler of Changmai, gives this document to Captain Burn and Moungh Shoay Gan, to state, as to the forest of which Moungh Shoay Gan is the overseer, according to an agreement with Chow Rajapoot, by which the forest is made over to him to superintend, from the year Chula Sakarat 1220 to the year Chula Sakarat 1230, the Chief of Changmai will not take it away from him, and gave it to any other, in consideration that Captain Burn and Moungh Shoay Gan have ceased the prosecution of their suit, so far as it concerns him the Chief of Changmai, and have concluded all matters between them.

Written Saturday the 10th of the waxing of the 5th Moon, year Chorok (April 16th, 1864)

A true translation,

HY. ALABASTER,

*Acting Interpreter, H. B. M. Consulate.*

This is to certify that the signature attached to the foregoing translation is that of the Acting Interpreter of this Consulate.

H. B. M. Consulate,  
Bangkok, 26th April, 1864.

ROBERT H. SCHOMBURGH,  
*H. B. M. Consul.*



## 3RD DEFENDANT'S STATEMENT.

THE 3rd defendant by his advocate, Donald Macleod, appears, and answers the plaint, and says:—

1st. That he is not, nor hath he been at any time the Agent of Shoay Gan, the 2nd defendant in the suit.

2nd. That he is not, nor hath he been at any time a partner of 1st defendant.

3rd. The 3rd defendant takes the same exception as the 1st defendant in para 4 of his answer, and in para 5 of his answer, and in paras 6 and 7 of the 1st defendant's answer.

4th. This 3rd defendant states he did receive the 52 logs in accordance with the agreement under which he made over the forests to 1st and 2nd defendants, as stated by 1st defendant in para 8 of his answer.

5th. 3rd defendant pleads the same as 1st defendant in paras, 9, 10, 11, 12, 13, 14, to 20th, of 1st defendant's answer.

6th. That 3rd defendant knows nothing of any armed force, and so forth: he, 3rd defendant, received the 52 logs in good faith, and in the fulfilment of the engagement and obligations entered into by 1st and 2nd defendants with him, and denies all right of the plaintiffs to any part of the same, places all their averments in issue, save and except those that may be in unison with 3rd defendant's allegations, and prays the suit may be dismissed as against him with costs.

RICHARD SNADDEN,  
3rd Defendant.

DONALD MACLEOD,  
3rd Defendant's Advocate.  
30th September, 1865.

2nd October, 1865.

Let the case stand till 3rd October for settlement of issues at 11  $\frac{1}{2}$  o'clock.

J. PITT KENNEDY.



3rd October, 1866.

Regular Nos. 161, 162, 163, 164, 165, 166, 170, 171, 173, 174 and 176.

Let the answers in these cases be filed on the first day on which the offices of this court open after the recess, the defendants undertaking to furnish to the plaintiffs' Advocate copies of the written statement in these cases, respectively, on or before Monday the 9th instant, and it is consented and agreed between the parties to the said several suits, by their respective Advocates, in open Court, that all legal evidence to be taken in Civil Regular No. 153, Nga Khine and others *versus* Burn and others, shall be evidence in the several other cases hereinbefore mentioned.

This order to be filed with Civil Regular No. 161, and a copy to be annexed to each of the other cases, and let the above case stand for the 17th instant.

(Signed.) J. PITT KENNEDY.

(True Copy.)

J. T. CHRISTOPHER,

*Recorder's Clerk.*

3rd October, 1855.

Mr. Snadden, a defendant, examined—

I know the defendant Burn as being in the firm of Burn & Co. which existed I believe : he was a member of it. I do not think that firm now exists between both the parties. To my knowledge he does not in any way carry on business in Maulmain. He left in February, but his younger brother left previously. I think there was an advertisement as to the business of the Northern Insurance & Co.

J. PITT KENNEDY.

3rd October, 1865.

Mr. Law undertaking not to object to the issue of a commission before the settlement of issue in case interrogatories be furnished to him on or before the 9th instant. Mr. Law to file cross interrogatories on or before the 12 instant. Let the hearing stand adjourned till the 17th instant.

J. PITT KENNEDY.

THE PETITION OF W. T.  
LAW, ADVOCATE FOR THE  
PLAINTIFFS IN REGULAR  
SUITS NOS. 153, 161, 162,  
168, 164, 165, 166, 170, 171,  
178, 174, and 176 of 1865.

Sheweth,—That Petitioner prays the court to place with the record of Regular Suit No. 153 this his *protest* against the reception of the printed answers filed by the defendants in the suits abovementioned, the same being in contravention of Section 120 Act VIII of 1859 and Act X of 1862.

And your Petitioner, &c.,  
W. T. LAW,  
*Advocate.*

16th October, 1865.

MOUNG BIKE *versus* BURN.

Mr. Pittar for the plaintiffs. The Court having called on Mr. Pittar to show what authority it possessed to review a former order not being a decree, who being unable to show just authority—

Application refused with costs.

J. PITT KENNEDY.

I agree with the above order,

D. BROWN,  
*Offy. Commissioner.*

Let the following issues be tried:—

1st. Did the cause of action arise within the jurisdiction of the court?

2nd. Did the 1st defendant, at the time of the institution of this suit, dwell or carry on business within the limits of the jurisdiction of the court?

3rd. Whether the cause of action arose within a foreign state.

4th. Whether the documents, marked A and B, were signed or executed by the Chief of Zimmay as alleged.

5th. Whether the said Zimmay Chief had title or au-

thority to make the grant in document marked A, and to receive the duty according to document marked B.

6th. Whether Chow Rajapoot signed or executed document marked X appended to the Commission issued to Bangkok.

7th. Whether Chow Rajapoot had title or authority to make the grant in said document X.

8th. Did the defendant Burn, or any one by his order or under his authority super-mark any of the logs in question in this suit ?

9th. As an issue of law, did any, and if any, what right, title, or interest vest in Shoay Gan under document X ?

Mr. Law, for the plaintiff, stating that by subsequent acts of Chow Rajapoot all interest of Shoay Gan, if any, was revoked—

Let the further issue be tried :

10th. Was the right, title, or interest of Shoay Gan revoked, cancelled, or made void by Chow Rajapoot, or any one acting under his authority at any time, and when ?

11th. By whom was the timber in question in the suit cut ?

Mr. Snadden stating that he believed some timber originally girdled by Shoay Gan had been subsequently cut by the plaintiffs :—

12th. Was any of the timber in question in this suit originally girdled by Shoay Gan, or any person acting on his behalf or by his authority, and subsequently cut by the plaintiffs ?

13th. Whether the defendant Burn had at the time of the institution of this suit any right, title, or interest in the timber in question in this suit ?

14th. In whose possession has this timber been since it entered British territory ?

Mr. Marshall, for the defendant, applies for issues whether the allegations in plaint amount to a charge of a heinous crime punishable under the law of India, and whether any suit can be brought on account of wrong done by the commission of heinous crime outside British

jurisdiction before the prosecution of the offender ?

The Court declines to grant those issues.

The above issues on behalf of defendant Burn.

Let the following issues be tried on behalf of Mr. Snadden, that is to say :—

1st. Was any of the timber in plaint mentioned in the possession of the defendant Snadden at the time of the commencement of the suit ?

2nd. As an issue of law dependant on the finding on the former issues and the frame of the plaint, are the plaintiffs entitled to a decree for the timber in the plaint mentioned or any of it ? also all those on behalf of the defendant Burn except the two first and the 13th.

The parties are to produce evidence on the above issues, and the case fixed for trial on the 14th December 1865.

J. PITT KENNEDY.

17th October, 1865.

To,

THE JUDGE OF THE COURT.

The Petition of J. McCall, one of the Plaintiffs above named.

SHEWETH—

That this suit is brought to recover 52 logs of Teak Timber in specie, the suit being valued at Rs. 3380.

That your Petitioner believes that the plaintiffs will receive great benefit in this suit from the discovery which he seeks by the issuing of a Commission to Zimmay to examine the Chief of that State, Shway Nan Shin, and also Chow Rajapoot, one of the lesser Chiefs upon interrogatories to be administered to them.

\* That your Petitioner believes that the plaintiffs have a good cause of action.

That the discovery sought by the issuing of said Commission, and examination of the said Shoay Nan Shin and Chow Rajapoot, is not made for the purpose of delay.

Your Petitioner therefore prays that your Honour will cause a Commission to issue to Zimmay for the examination on interrogatories of the said Shoay Nan Shin and Chow Rajapoot.

And your Petitioner as in duty bound

Maulmain, }  
19th October, 1865. }

shall ever pray,  
JOHN MCCALL,  
W. T. LAW.  
Petitioner's Advocate,

20th October, 1866.

Application for a Commission to Zimmay by Plaintiff.

Let the application stand over till Thursday next the 24th instant, the defendants are at liberty to file any counter-statements on that day.

J. PITT KENNEDY,  
*Recorder.*

---

*Telegram.*

From Rangoon. ‘	To Maulmain.
” Major Davies	To Colonel Brown.
Sanction for Spearman to go to Zimmay refused in absence of full written explanation.	

Maulmain, }  
21st October, 1865.

21st November 1865.  
J. B. CARRAPIETT, “  
*Assistant in Charge.*

---

24th October, 1865.

MR. JOHN MCCALL—

I am a Plaintiff in this suit. I believe the evidence of Chow Rajapoot and the Chief of Zimmay to be necessary in every point in this case. I have heard it asserted that Chow Rajapoot made the grant. I have no positive belief on the subject. I cannot say whether the grant was executed or not.

J. PITT KENNEDY.

---

LET a Commission issue for the examination of Chow Rajapoot, and the Zimmay Chief, said Commission not to issue until the 18th of December.

The plaintiff forthwith to file the interrogatories already prepared, the defendants to be at liberty to file cross interrogatories within one week from this date, and the plaintiff to file interrogatories by way of re-examination within one fortnight. The evidence taken under the Commission to be evidence in the several Cases No. 153, 161, 162, 163, 164 165, 166, 170, 171 173, 174 and 176, and let the said several cases come on for order on the said 18th day of December 1865, and the hearing of the said cases heretofore fixed for the 14th day of December 1865 stand adjourned till a further day be appointed.

J. PITT KENNEDY.

24th October. 1865.

THE HUMBLE PETITION OF R. C. BURN  
AND R. SNADDEN, TWO OF THE ABOVE  
DEFENDANTS.

SHEWETH—

1st. The various plaints in the above suits were filed in this honorable court at various dates, in September and October, 1865.

2nd. On the 6th October 1865, on the application of the defendants on notice to the plaintiffs, this honorable court made an order for the issue of a commission to Bangkok, the capital city and Royal residence of Siam for the purpose of taking the evidence of Her Britannic Majesty's Consul at that place, and of His Royal Highness Prince Krom Luang Wongsa.

3rd. On the hearing of such motion, leave was given to the plaintiffs to join in the said Commission, and file cross interrogatories for the examination of the said witnesses within 3 days from the service on them by the defendants of a copy of the interrogatories, which the said defendants proposed to administer to the said witnesses.

4th. The plaintiffs' advocate represented himself at such last mentioned hearing as desirous of filing such cross interrogatories, and the defendants accordingly, on the 9th October 1865, served on the said advocate for the plaintiffs a copy of the interrogatories which defendants proposed to administer to the said witnesses.

5th. Among other points on which the defendants were desirous of obtaining evidence by means of the said commission, were the validity and effect of certain documents purporting to have been executed by Chow Rajapoot, and the Chief of Zimmay, respectively. The originals of the said documents were accordingly annexed by the defendants to their said interrogatories.

6th. The said plaintiffs neglected to file any such cross-interrogatories as aforesaid, and the said commission was, on the 16th day of October 1865, forwarded by the defendants to the said city of Bangkok.

7th. On the 19th October 1865, plaintiffs filed a petition praying for the issue of a commission to Zimmay in the above suit for the purpose of taking the evidence of the said Chow Rajapoot and Chief of Zimmay, such petition was verified by John McCall, one of the afore-said plaintiffs, who stated to the effect that the said Chow Rajapoot and Chief of Zimmay might be able to give material evidence in the said suit, but omitted entirely to show in support of what averments in the plaint such evidence could be given.

8th. The said petition was heard by this court on the same 19th day of October 1865 (your petitioners having no notice of such petition until the said day and immediately previous to the hearing) when this honorable court was pleased to order that the defendants should file a counter-petition setting forth the grounds on which the the defendants resisted the said application to a commission to Zimmay.

9th. In accordance with the said order, your petitioners crave leave to set forth the following grounds why such last mentioned commission should not issue :—

A. Because plaintiffs in their petition praying for the said com-

mission, and at the hearing of the same, neglected to show, which they were bound to do, that the evidence sought by the said commission was necessary or material to the decision of the matters now before the court in these suits.

B. Because the town of Zimmay is situated in a barbarous district of Siam, in which there is not a single European resident, and in which there exists no security whatever for the protection for life and property of any person to whom a commission might be entrusted.

C. Because the object of the said commission being to obtain the evidence of persons in high positions under the King of Siam, any proceedings for that purpose ought to be based on an application to or through the British Consul, who is by the Treaty entered into between Her Britannic Majesty and His Majesty the King of Siam, vested with extraordinary powers with reference to civil matters in dispute between Siamese subjects and subjects of Her Majesty, and any communication otherwise than through the Consul with such high officials is wholly without precedent.

D. Because no commission could now be issued to Zimmay without great prejudice to the defendants' case, inasmuch as the documents (X and Z of the defendants commission to Bangkok) on which evidence would manifestly be based touching to rebut any hostile evidence likely to be given by Chow Rajapoot and the Chief of Zimmay cannot accompany the commission now applied for, nor could Chow Rajapoot and the Chief of Zimmay be interrogated with reference thereto in the absence of the said original documents.

E. Because the application of the plaintiffs for the said commission is not *bona-fide*.

Your Petitioners therefore humbly pray that this honorable court will be pleased to reject the petition presented by the plaintiffs for the issue of a commission to Zimmay, and your petitioners as in duty bound shall ever pray, &c., &c , &c

DONALD MACLEOD,  
*Defendants' Advocate.*

To

THE REGISTRAR OF THE COURT.

THE PETITION OF THE PLAINTIFFS BY  
W. T. LAW, THEIR ADVOCATE.

Pray that they may be furnished with 'an authenticated copy of [all] the proceedings held in the above suits subsequent to the answer filed by the defendants.

And your Petitioners as in duty bound,  
shall ever pray.

W T<sup>o</sup> LAW

Maulman, 26th October, 1865

Let the above cases stand over till Monday next, the

18th instant. Defendants to file written statements on or before that day.

J. PITT KENNEDY,  
Recorder.

14th December, 1865.

• The following cases fixed for this day are to stand over until Monday next the 18th instant.

Regular Nos. 153, 161, 162, 163, 164, 165, 166, 170, 171, 173, 174, 176 of 1865.

18th December, 1865.

Let the answers in these cases be received when properly stamped. Same issues as in Civil Regular No. 153 of 1865. Let the above cases stand for Saturday the 23rd for orders.

J. PITT KENNEDY,  
Recorder.

The 23rd December, 1865.

Let the above cases stand over till the 3rd January for Mr. Macleod to file a fairly written answer.

THE PETITION OF RICHARD SNADDEN,  
ONE OF THE DEFENDANTS IN THE  
WHOLE OF THE SUITS NOTED IN  
THE MARGIN.

Nos. 153, 161, 162, 163, 164, 165,  
166, 170, 171, 173, 174, 176, 185,  
186, 187, 188, 193, 195, 196, 197,  
and 200 all of 1865.

Respectfully sheweth,—

That your Petitioner has every reason to believe that one of his Co-defendants, R. C. Burn, died at Bangkok on or about the 25th or 26th of November last past.

Petitioner, therefore, suggests the same to this honourable court that such steps may be taken as to this court may seem just and proper, or such orders passed in regard to parties as the case may require.

And in duty bound shall ever pray,  
RICHARD SNADDEN.

MAULMAIN, }  
The 3rd January, 1866. }

3rd January, 1866.

Let these cases stand till the first day of next sessions, with liberty to the plaintiff to take such steps as he may



be advised to bring the representative of Captain Burn before the court, subject to the opinion of the High Court in the case submitted by me as to the necessity of such representative being a party to the suit.. This order to be filed with Civil Regular No. 153 of 1865, and a copy with each of the others.

J. PITT KENNEDY.

---

29th January, 1866.

Mr. Snadden in person consents to the application of Mr. Law for the adjournment of this case till the 1st day of next sessions.

J. CORYTON.

---

24th April, 1866.

Present John McCall in person, with his advocate, Mr. Law.

Present defendant R. Snadden, with his advocate, Mr. Macleod.

Before the case is heard, defendant's advocate brings to the notice of the court that the first defendant Burn is dead, and that his representatives are not yet before the court: the second defendant Shoay Gan has not yet been served with summons, and that Snadden, the third defendant, is sued only as agent for Burn, and his agency ceased with Burn's death.

The defendant's advocate consenting, the court accedes to Mr. Law's request for a postponement to the 13th day of May to enable them to ascertain and place the necessary defendant on the record; as the court has this day ruled that it devolves on the plaintiffs to expiscate, point out, and indicate all parties against whom they consider themselves to have cause of action.

W. H. CLARKE.

---

THE PETITION OF KO KHINE,  
THOMAS DUNLOP FINDLAY, JAMES  
FINDLAY, AND JOHN MCCALL,  
PLAINTIFFS IN THE ABOVE SUIT.

Respectfully sheweth—

That on the 3rd January last notice was given to this honorable court by the 2nd defendant of the death of the 1st defendant at Bangkok, and as his representatives were unknown, and the 2nd de

defendant had from the commencement evaded service of summons, plaintiffs applied to the court to proceed with the case against the 3rd defendant.

The application was opposed by the 3rd defendant's advocate, who asked the court to postpone the case to the next sessions to enable him to ascertain if there were a will, and if so, who were the representatives, on the ground that they should be made parties to the suit.

That the case was accordingly postponed, and a case was submitted by the then learned Recorder to the High Court asking the opinion of the said High Court whether or no 1st defendant's representatives must of necessity be parties to the suit.

That the case was again called on, on the 29th January last, and the opinion of the High Court not having been received, it was postponed to the first day of the following sessions.

That on the 24th April last, the case was again called on, when it was postponed to this day to enable plaintiffs to ascertain and place on the record necessary defendants, i. e. the representatives of Burn deceased, on the record

Plaintiffs have reason to believe that the 3rd defendant and his advocate are fully aware who the representatives of the deceased defendant are, and that they are keeping 2nd defendant out of the way of being served with process. So plaintiffs now submit that without taking the evidence of witnesses they are unable to ascertain who are Burn's representatives, and pray that they may be allowed to ascertain the same by the production of witnesses, or that the case may proceed against Snadden alone, he being in possession of the timber sued for, and refusing to deliver it up, and that for the purposes of this suit they are prepared to proceed against him solely, and be satisfied with a decree of this court against him, as he alleges he is no partner of Burn

And your petitioners as in  
duty bound will ever pray.

W T. LAW,  
*Plaintiffs' Advocate*  
Maulmain, 5th May, 1866

J McCALL,  
*For self & Co plaintiffs.*

---

8th of May, 1866.

Case called on. Advocates for parties present.

Mr. Law, advocate for plaintiffs, hands in a petition for Mr. McCall, one of the parties to the suit. He states that a copy has not been served on the defendants.

Mr. Macleod in reply.

The court is of opinion that in the matter of substituting the names of deceased defendant's representatives and of placing on the record the names of other defendants against whom the plaintiffs may be desirous of proceeding, the court is strictly bound to follow the provisions of the 10th section of Act VIII of

1859. At the last hearing of the suit, on the 24th of April, the court clearly indicated to the plaintiffs' advocate that, in its opinion, the duty of expiscating defendants was the plaintiffs' duty, and the duty of the plaintiffs only. To that opinion the court still adheres: and fortified therein by the express, though permissive, terms of the 104th section of Act VIII of 1859, must decline, unless precedent can be shewn for the course, to accede to so much of the petition or prayer, that plaintiffs may at this stage of the case be allowed to ascertain by the production of witnesses who the representatives of the deceased defendant are. This was the express purpose for which the case was postponed a fortnight ago: and the court considers it ought not to retard the progress of a suit, except under very special and particular circumstances. A time was allotted to plaintiffs to do a particular act, to which time they consented as reasonable, and no further time can now be granted for that purpose.

With regard to the other question, the postponement of the case pending the reception of the ruling of the High Court on the reference made to it by Mr. Recorder Kennedy as to the necessity of the joinder of Burn's representative, the court hardly thinks necessary to do more than to observe that the previous part of this order renders waiting for such joinder unnecessary, as plaintiffs have taken no steps to ascertain who such representatives are. But the court must record that the present Recorder does not entertain the view held by the late Recorder as to the necessity of that reference, and that section 23rd of Act XXI of 1863 distinctly empowers this court to proceed without awaiting the return of the reference. Mr. Law, for the plaintiffs, now moves to proceed with the case against Snadden, the 3rd defendant only, and that the name of the 1st and 2nd defendants be, with leave of the court, under the 97th section of Act VIII expunged, pro-hoc-vice, and withdrawn from the record, reserving to the plaintiffs any legal right or remedy they, the said plaintiffs, may have against the said defendant, or either of them or their representatives, in a subsequent suit on the same cause of action.

Ordered accordingly, but the plaintiffs shall be and are hereby declared liable to the said defendants for

all costs incurred up to this date which may legally be taxable in their favor under Act XXI of 1863 by the Recorder.

Case to proceed against 3rd defendant only.

W. H. CLARKE.

The case fixed for trial on the 18th instant peremptorily.

W. H. CLARKE.

THE PETITION OF RICHARD SNADDEN,  
NOW SOLE DEFENDANT IN THE  
SUITS SET FORTH IN THE MARGIN.

Respectfully sheweth,

Civil Regular Cases Nos. 153, 161, 162, 163, 164, 165, 166, 170, 171, 173, 174, 176, 184, 185, 186, 187, 188, 193, 195, 196, 198, 197, and 200 all of 1865. That the Plaintiffs in all the suits named in the margin of this petition had time allowed them to name the representatives of Burn deceased, with a view to such representative being made defendant in his stead.

That they, the plaintiffs, failed to name any such person, and are therefore in default under sec. 148 of Act VIII of 1859.

That the plaintiffs this day then voluntarily withdrew the names of Shoay Gan and Burn from each of the suits named in the margin, and elected to proceed against petitioner alone, under the plants filed.

That petitioner in the whole of the plaints in the suits set forth in the margin is charged with refusing to deliver the logs sued for in specie as "*Agent of Burn*," or with entering them as "*Agent for Burn*," and so forth, and in Civ. Reg 153, 162, 163 and 171 this petitioner is declared to be "*Burn's Partner*," a position abandoned in subsequent plaints filed.

Petitioner therefore humbly submits that in the plaints filed, the suits are manifestly laid against him only as the agent of Burn and in no other way; Burn's agency ceased with his death—Nov. 26th 1865. Petitioner therefore further humbly submits that the cause of action cannot be held as surviving against him singly as set forth in these plaints, and these suits should not therefore be allowed to proceed.

Petitioner therefore prays that the suits filed against him, named in the margin, may be dismissed with all costs.

And shall ever pray,

DONALD MACLEOD,

*Advocate for Richard Snadder,*

*Now Sole Defendant.*

Maulmain, 6th May, 1866

May, the 9th, 1866.

Place on the file of the case, which is already fixed for hearing on the 18th.

The court will consider the terms of the preliminary issue of law suggested by this petition, and hear arguments on it before commencing the trial on the 18th.

W. H. CLARKE,  
Recorder.

Civil Regular Nos. 153, 161, 152, THE PETITION OF R. SNADDEN,  
163, 164, 165, 166, 170, 171, 173, NOW SOLE DEFENDANT IN THE  
174, 176, 184, 185, 186, 187, 188, SUITS NAMED IN THE MARGIN.  
193, 195, 196, 197, and 200, all of  
1865.

RESPECTFULLY SHEWETH—

That by the "Rangoon" mail steamer, which arrived here on the 10th instant, petitioner received reliable information that certain important papers &c, had been received at Rangoon, and which this petitioner verily believes will have strong bearing on the evidence which may hereafter be adduced in all the cases named in the margin, and petitioner verily believes and states that said papers are with Colonel Phayre, C. B., Chief Commissioner of British Burmah.

Wherefore, petitioner without prejudice to his rights and to his petition to be heard on the 18th, and solely that no delay may occur in placing forthwith before this court the aforesaid papers.

That this court will be pleased, if it shall deem fit, to communicate with Colonel Phayre, C. B., Chief Commissioner of British Burmah, to secure the production of the said papers *quantum valiet* or that this court with be pleased to allow a commission to issue to the Judge of the Small Cause Court, to receive the papers from the Chief Commissioner aforesaid, and to take the evidence by interrogatories or otherwise of the said Chief Commissioner in this one matter of the papers, and on no other. Or that this Court will be pleased to order such other mode of procedure as shall best secure the production of the papers aforesaid before this honorable court.

And your petitioner as in duty bound  
shall ever pray.

RICHARD SNADDEN.

Maulmain 11th May, 1866.

Received by me at 3 p. m., May 11th, 1866. As the mail Steamer leaves at 10 A. M. tomorrow morning, I am unable to attend to petitioner's wishes, especially as notice *must* go to the opposite party. Petitioner should serve such notice at once, and apply for orders on Monday.

W. H. CLARKE,  
Recorder.

Plaintiffs pray that subpoenas may issue to the following witnesses to attend Court to give their evidence, on the 18th instant, the day appointed for the hearing of the above suit.

NAMES.	OCCUPATION.	RESIDENCE.
* Moung Ingah.....	Timber Trader.....	Maulmain....
Moung Aik Pyin.....	.....Do.....	.....Do.....
Moung Bike.....	.....Do.....	.....Do.....
Moung Mhone.....	.....Do.....	.....Do.....
* D. Brown, Lieut-Col....	Commr., T. D., B. B.....	.....Do.....
W. R. Maling.....	Forester.....	.....Do.....
Moung Mhine.....	Timber Trader.....	.....Do.....
Moung Tsein.....	.....Do.....	.....Do.....
Nga Koo.....	Cooléy.....	.....Do.....
† M. J. Slym.....	Assist. Cons. of Forests...	Kadoe.....
‡ C. O. Johnstone.....	Forester.....	Maulmain....
§ G. Faithfull, Major.....	Dy. Commr., D. A.....	.....Do.....
F. N. Burn.....	Forester.....	.....Do.....
Bingnyakin .....	Clerk to Chief of Zimmay	.....Do.....

\* To produce a letter addressed by Sir Robert H. Schomburgh (dated 28th May 1864) to the address of Colonel A. Fytche, late Commissioner, Tenasserim Division, British Burmah, with its enclosures, viz., copy of a despatch from the said Sir R. H. Schomburgh to Earl Russel and the proceedings of the Siamese Court in the matter of Shoay Gan against the Chief of Zimmay; a letter to the address of the Commissioner, Tenasserim Division, British Burmah, from the Chief of Zimmay, dated the 17th February 1860; letters addressed by the Chief of Zimmay to the Commissioner of Maulmain, and respectively the 20th April, 12th May and August 1865; replies of the Commissioner, dated respectively the 27th April and 13th June 1865; letter from Colonel Fytche to the address of the said Chief of Zimmay, dated 28th January 1865; petition of Moung Thoon Zan and others to the Commissioner T. D., dated 31st January 1865, and the orders thereon; and also petition of Moung Khe to Deputy Commissioner, A. D., dated 18th April, and the orders thereon.

† To produce book containing list of Hammer marks issued, and the dates thereof and also books showing the arrival of timber at Kadoe, and of the applications of the possessors for certificates.

‡ To produce all documents filed by him when a defendant in Regular suit No. 84 of 1864, *Shoay Gan v. R. Snadden and 3 others*; also copies of all petitions presented to Colonel A. Phayre, Chief Commissioner, B. B. against the late R. C. Burn and others, with all papers relative thereto.

§ To produce original letter addressed by Chow Rajapoot to the Deputy Commissioner A. D., dated 13th October 1862, and the re-

ply forwarded by Major J. P. Briggs, then Deputy Commissioner, to the Chief of Zimmay, and dated 3rd November 1862; and also petition of Moung Kee to the Deputy Commissioner, D. A., dated 18th April 1865, and the orders thereon.

Maulmain, 15th May, 1866.

W. T. LAW,  
*Plaintiffs' Advocate.*

Subpœnas to issue as prayed for.

By order,

D. A. NICHOLAS,  
*Chief Clerk.*

May 15th, 1866.

THE PETITION OF THE PLAINTIFFS  
IN THE ABOVE SUIT.

RESPECTFULLY SHEWETH—

That in order to prove the issues in the above suit your petitioners require the evidence of the defendant, Richard Snadden, and of the production by him of certain documents hereinafter mentioned.

Petitioners therefore pray that under the provisions of section 162 of Act VIII of 1859, a subpœna may issue to the said Richard Snadden to attend court on Friday the 18th instant, the day appointed for the hearing of the above suit, to give his evidence; and also to produce the documents filed by him in Regular suit No. 84 of 1864, *Shoay Gan v. R. Snadden and 3 others*, more particularly a document dated 6th May 1864, Old Royal Palace, Bangkok; two letters dated respectively the 24th and 26th June 1865, and addressed by Messrs. Todd Findlay & Co. to the said R. Snadden; all correspondence with Mr. Knox, H. B. M's. Consul at Bangkok, regarding the Mhyneloongyee forest; and copies of the petitions made to Colonel A. P. Phayre, C. B., Chief Commissioner of British Burmah, by the said Richard Snadden against the late R. C. Burn and others, with all the papers relative thereto.

And your petitioners as in duty  
bound shall ever pray.

W. T. LAW,  
*Plaintiffs' Advocate.*

Maulmain 15th May, 1866.

A Subpœna to issue under provisions of Section 162 of Act VIII of 1859.

By order,

J. K. MACRAE,  
*Registrar.*

May 15th, 1866.

Civil Regular Nos. 153, 161, 162, 163, 164, 165, 166, 170, 171, 173, 184, 176, 184, 193, 195, 196, 197, and 200, all of 1865. •

THE PETITION OF RICHARD SNADDEN, NOW SOLE DEFENDANT IN THE CASES NOTED IN THE MARGIN.

RESPECTFULLY SHEWETH—

That petitioner filed a petition, and was heard by his advocate in respect thereof, this day on the point of default by plaintiffs, and petitioner's advocate moved that the cases should "*be decided on the record.*" under the provision of section 148 of Act VIII of 1859.

That the court has given no specific ruling on this point so material to the case ; indeed if adverse to petitioner such specific ruling would form the chief ground of appeal to higher authority. Wherefore petitioner prays that this court will be pleased to give such ruling, and, if adverse that petitioner may thus appeal in one cause.

Petitioner respectfully protests against these cases proceeding, and claims they should be decided upon the record just as it stood at the time when the plaintiffs were in default under section 148 of Act VIII of 1859.

DONALD MACLEOD,

And shall ever pray,  
RICHARD SNADDEN,  
*Petitioner's Advocate.*

The petitioner's advocate wholly misapprehends the meaning of the 148th section, in the opinion of the court. "Decision on the record" certainly does not mean to the exclusion of all forthcoming evidence.

May 18th, 1866.

W. H. CLARKE.

*Maulmain, 18th May, 1866.*

Parties and their Advocates present.

Mr. Macleod addresses the Court on the matter of the petition submitted by him on the 8th instant.

Mr. Law for the plaintiffs replies.

The court rules that the action can proceed against the 3rd defendant Snadden, though he is stated in the plaint to have acted as Burn's Agent. The law makes a great distinction between a mere agent, and an agent *having an interest*. No doubt in the case of a mere agent the death of the principal dissolves the agency ; but as Story says, §. 489, there is an exception where the agent's power and authority is coupled with an interest in the thing actually vested in the agent. Now the plaint in express words declares Snadden to have a *great interest* in the timber, and coupling that with his



answer, in which he disclaims all agency, and all partnership, and claims as owner, there can be no doubt that plaintiffs are entitled to proceed against him as claimant *de facto* of the timber, which it is the special object of this suit to recover.

W. H. CLARKE,  
*Recorder.*

### EVIDENCE FOR PLAINTIFFS.

#### 1. NGA BIKE, sworn—

I am a timber trader ; and know plaintiff Ko Khine. I have been to Zimmay. I met plaintiff there. I saw some documents executed in the Zimmay town—2 in number connected with the plaintiff in this suit. I have now looked at exhibits A. and B.—those are the 2 documents of which I spoke. On the occasion of the execution of those documents, I saw plaintiff pay some money to the Chief of Zimmay, Rupees 2700 on account of timber duty, for Mhyneloongyee timber, 609 logs in all. I know plaintiffs timber mark : it is No. 44 in Burmese characters. I have seen timber at Mhyneloongyee marked with that mark. That timber, at that time, bore no other mark. I have also been to Kadoe, and saw timber with the same mark there in the defendant's htay, Snadden's timber yard. It then bore other marks beside the 44. It was then marked M and Nga Hae. I think I saw in Snadden's yard 250 logs marked 44 and Nga Hae. When the duty was paid at Zimmay, there were present Eik Pren and Eng-Ha and others whose names I can't remember. Also Mah Dote. I have now looked again at document B. I saw the seal put on that document by the Chief of Zimmay, Shoay Nan Shin.

*Cross Examined.*—I only know the logs by their all having the same stamp. The sealing I spoke of by the Chief of Zimmay was in Burmese year 1226, month of Wah Goung, 3rd day of waxing moon. A and B were written and stamped on the same day ; the seal was impressed by the Chief with his own hand. The timber was cut in B. Y. 1225, in Wah-so and Wah-goung months. Such timber takes three years to die, from girdling to felling. The timber was girdled by Eik Pren. I saw him girdle it. The forests were then held by the Chief. The plaintiff, Moung Khine, did not girdle it at the commencement. He did it afterwards. He did so in 1225. This is 1228. What Moung Khine girdled have not yet been felled. I am a plaintiff in one of these suits, for 108 logs, against Snadden. I have not known of any grant to Shoay Gan. I have heard of such a grant. Shoay Gan was not in charge of the forest in 1225.

*By the Court.*—The timber girdled by Moung Khine has none of it yet come down. It was girdled in 1225. The timber I saw in Snadden's yard was girdled by Eik Pren and felled by Moung Khine. I saw the coolies cutting it down.

Read over.

W. H. CLARKE,  
*Recorder*

## 2. MOUNG KHINE, plaintiff, sworn—

I am a timber trader in Mhineloongyee trade. I have been so above five years. I had a partner named Eik Pren. I paid duty for timber, 609 logs, to the Chief of Zimmay. The document B. is the receipt I got for that duty, which I paid to Zimmay Chief in 1226. I marked my timber with my own stamp, 44 in Burmese characters. The timber was cut by my coolies. The trees had previously been girdled for killing by Eik Pren, my partner. He has been working in Mhineloongyee one or two years as partner with me. I have seen that timber at Kadoe, in defendant Snadden's yard. It then bore other marks besides mine—a foreign mark besides mine—and Nga Hae.

*Cross Examined.*—I have now looked at A also. It is the grant which I got from the Chief of Zimmay—given to me by head writer in 1226, in the month Wah Goung, during the waxing moon. I commenced work as soon as I got my grant. I cut the timber, floated it down, and it stuck on a shoal, in the Mhineloongyee creek. I had my coolies and elephants all ready, and commenced work the day I got my grant. After I got the grant, I cut about 500 trees. Such timber takes two or three years to (season) (die.) Ever since the timber came into British territory, the timber has been in Snadden's possession. I saw the Chief personally stamp A and B with his own hand. They were then handed to me. The signature now shown to me is my signature (No. 188.) So is the signature of the plaint in this suit. I never applied to Mr. Snadden for that timber, nor authorised any one to apply, as I had sold my right and interest to Mr. McCall. I have no claim on this timber. I made over all my right to McCall before this suit was brought, without any reservation.

Read over,

W. H. CLARKE.

## 3. EIK PREN, sworn—

I am a timber trader. I have been to Mhineloongyee forests for some years. I know the plaintiff Moug Khine. He was formerly a partner of mine. I have now looked at B. I saw the duty paid to the Zimmay Chief by Moug Khine on 609 logs. That was in Wah Goung, 1226, waxing moon, 3rd day. The 609 logs were cut in 1225. Moug Khine worked under the permit granted to me in 1225, which permit I returned to the Chief when A was granted to Moug Khine. These 609 trees were girdled by my servants, and felled by the first plaintiff. When felled the timber was marked by forest mark, with a few chips, and when duty paid marked with 

99
----

I saw that mark put. I remember Burn and Shoay Gan going to the forest, after the timber was in the water and partially washed down 8 or 9 months after. I was then in Zimmay; I came to Mhineloongyee from Zimmay, where I arrived on the 9th of Tagoo. On the 10th of that month Shoay Gaa and Burn, I mean the late 1st and 2nd defendants—we were attacked by them with lots of

people, and I ran away. The timber was then in the water, some at the shoal, and some at the Mhineloongyee Creek. I then went up to Zimmay to complain to the Chief of Zimmay. I have lately been to Kadoe, and there I saw timber which I had last seen in the Mhineloongyee and cut was bearing additional and foreign mark. At Kadoe, that timber was in possession of defendant Snadden.

*Cross Examined.*—Ever since the timber has been in British territory, the timber has been in Snadden's possession. The timber was some of it marked with the foreign mark and Nga Hae before we ran away on being attacked.

Read over,

W. H. CLARKE.

Recalled—

Burn and his party had been in the forest for about 2 months before I arrived at Mhineloongyee.

#### 4. MOUNG KHYEE, sworn—

I am a timber cutter, and work in the Mhineloongyee Creek. I was employed by plaintiff MOUNG KHINE. I cut timber for him in Mhineloongyee forest commencing in B. Y., 1225, and returned only last year. I cut for him about 300 or 400 logs, and Kareens were also cutting too. The timber so cut was stamped by myself with 44 (the two sickles) MOUNG KHINE's hammer mark.

Read over,

W. H. CLARKE.

#### 5. MOUNG MHINE, sworn—

I am a cooly, was employed in the Mhineloongyee forests for him, in 1225, for plaintiff, felling timber. He had elephants, dais, and axes—6 elephants. I saw plaintiff's mark, the two sickles, put upon about 700 logs of timber—4, 5, 6, or 700.

Read over,

W. H. CLARKE.

#### 6. MOUNG KHO, sworn—

I am an elephant driver for plaintiff, and worked for him in Mhineloongyee dragging his timber. My elephants dragged the timber from the forest to where they were collected on the bank. We were so employed for two or three months. We brought the timber down as far as the shoal.

Read over,

W. H. CLARKE.

A witness named F. Burn is now called, but does not appear.

---

7. M. B. MURRAY, sworn—

I am the bailiff of court. I delivered the subpoena to Burn for service to peon Noordeen on the 16th, and received it back on the 17th unserved. I only know what occurred from what Noordeen told me.

---

Noordeen sent for.

8. NOORDEEN, sworn—

I received a subpoena to serve on Mr. Burn. I could not find Burn to serve. I looked for him at defendant's house and in Cantonment. I could not find him.

---

9. J. McCALL, sworn—

I know the witness Burn. I believe the evidence of the said Burn is material to the truth of this case. I believe that he is keeping out of the way to avoid the service of the subpoena in this case. I have reliable information that he was seen yesterday in Maulmain. I believe on my oath he is still in Maulmain.

Ordered that the Bailiff do forthwith proceed to the last known place of abode of Burn, and affix on the post a proclamation signed by the Registrar ordering his attendance at Court at 11 a. m., tomorrow, on pain of punishment for contempt.

W. H. CLARKE.

---

It being now 5 p. m., farther hearing is adjourned till tomorrow at 11 a. m.

Mr. Macleod mentions to the court that he received, a day or two ago, some documents which he will desire to produce hereafter, and was not able to file earlier.

Mr. Law intimates to the court that he wishes a distinct statement whether the other 22 cases connected with this case are to stand or fall with this case, as Mr. Recorder Kennedy mentioned only 11 cases.

To be mentioned tomorrow.

W. H. CLARKE.

19th May, 1866.

Case resumed.

Advocates for parties present.

10. FREDERIC BURN, sworn—

I am a forester. I am not in partnership with any one. I was an assistant to my late brother, Captain R. C. Burn. I was a partner in the firm of Burn & Co.

*Question proposed*—When did that partnership commence, and when did it close?

Question objected to by the defendant's advocate, and disallowed by the court as not relevant to any declared issue.

I was employed by my brother as an assistant forester in 1865. I went up in December 1864 to the Mhyneloongyee forests under my brother's order. I arrived in Mhyneloongyee in January 1865, below the Kho Pyke Shoal or Barrier about 21 days below the shoal. We built a hut at the mouth of the Mhyneloongyee creek. I think I had 12 or 15 men with me. We had with us 20 or 25 hammers, some marked M and some with Nga Hae—about 12 of each. About 3 weeks after, we got reinforcements of about 25 men more. A man named Hill came up also, engaged by Captain Burn. I marked all my timber, my brother's timber which I was employed to mark. This was the timber below the Barrier. The timber in several cases had other marks—Burmese marks.

My brother was not with me on this occasion. I marked the timber, as I saw it in my brother's forest, which he held by a grant from Chow Rajapoot to Shoay Gan. The creek I speak of is comprised in the Mhyneloongyee forest. I marked all the timber I found in the creek below the Barrier. I had never been in that part before. I took the boundaries as being those of Chow Rajapoot from Burmese who were with me who know the boundaries. I had not the grant with me. I met with no opposition to marking this timber, not the slightest. No one was in charge, and no one questioned my right. I made a rope station to catch the timber at the mouth of the creek—still in Mhyneloongyee,—to catch the timber for the purpose of marking it, and to prevent any timber going out of the Mhyneloongyee forests without the stamp of M and Nga Hae.

*Question proposed*—Had you any cannon with you at the htay or hut which you erected?

We took weapons of war wherever we went.

The court over-rules the further question proposed as to whether the witness employed a trumpeter or other military display in seizing this timber.

We had no British or other flag. We were continually going and coming up and down. I went up to Mhyneloongyee the following July. I know nothing of the marking of the timber between Kow-pike and Mhyneloongyee before I went up. I received further timber after my arrival at Mhyneloongyee marked by myself personally. I found, on my arrival at Mhyneloongyee and on my way up, that other tim-

ber had been marked by my brother's mark. I saw Mr. Maling on my way up to Mhyneloongyee. I know Shoay Gan, late 2nd defendant. I do not know that he marked any of the timber. I did not see Shoay Gan when I was at Mhyneloongyee. Some of my party returned from *above* Mhyneloongyee and told me that they had marked timber. I was head man of that party from August 1865 to January 1866. I did not meet Eik Pren at Mhyneloongyee, nor did I look for him. No officer came down from Zimmay and remonstrated with me about marking this timber. I often saw officials. I spoke with them in imperfect Burmese.

*Question proposed*—Did you take possession of any elephants?

The court does not consider this question relevant to the issues.

Since my brother's death, I have been awaiting further instructions. I have not been a day under defendant's instructions. I have been to Bangkok since my brother's death, on my own responsibility. The defendant supplied me with cash. I am not employed by defendant now, nor do I expect to get a salary from him. I have no claims on defendant whatever. I am in no one's employment now. Since I knew of my brother's death I have done nothing with the Mhyneloongyee timber. I went to Bangkok to make a complaint of acts done in the forest of Mhyneloongyee, not regarding the timber in this suit—regarding property and personal effects at Mhyneloongyee, to Mr. Knox. I had no instructions from Mr. Snadden. I had no other reason for going to Bangkok. I did before my brother's death give instructions to prevent my timber being removed. I had my brother's authority for all what I did in Mhyneloongyee. My brother received letters from Snadden while in Mhyneloongyee. I may have received one, but cannot swear. I received no instructions from Snadden while I was in Mhyneloongyee. I was at Yain-byne before I went to Mhyneloongyee. I got no letter or instructions there from Snadden. I never got any instructions from Snadden—only a letter or 2, but no instructions. I saw Shoay Gan yesterday in Maulmain. The boundaries of Mhyneloongyee as pointed out to me were the Mhyneloongyee river and Thoung Yeen river—on the other side. The Mhyneloongyee forests are on the right bank. Both banks were pointed out to me as Mhyneloongyee. The forest was on both sides of the bank. I could see the boundaries from the hut. I know nothing as to the boundaries except what I have been told.

*Cross examined.*—I received the letter and document marked W in the box which I now produce addressed Fred. Burn, Esquire, in January 1866, from the Consulate at Bangkok.

The document and certificate produced are here read out by the court to all parties.

I have seen Mr. Knox write, and am prepared to swear that it is signed by Mr. Knox. I have now looked at the attached seal, and at the impressed seal. They are the seals of British Consulate at Bangkok. My brother died in Bangkok, and I received this box as containing my brother's effects, and this document among them. I remember the notice published in the "*Maulmain Advertiser*" by

Shoay Gan—22 June 1864. I marked all the timber as I believed in good faith it was my brother's.

*Re-examined.*—I received that box at Snadden's house, from my brother's servant. The document has been in my possession ever since—for the safe keeping in Mr Snadden's chest. The box is full of Mhineloongyee papers. It does not contain a repudiation or a compromise by the King of Siam. I never saw this document before it came in my box. I allowed Mr. Snadden to read the document and gave it to him to lock up in his chest till yesterday, when he returned it to me.

The court now calls on plaintiffs' leading advocate to show cause, if any, why the document now produced should not be received as admissable in support of defendant's case, and in rejection of plaintiffs' claim.

Mr. Law addresses the court, and hands in, at the request of the court, a note of his objection to the admissability of the document in evidence.

Mr. Macleod is heard in reply.

The court is, after careful consideration, of opinion that the document now produced is not admissable in in this case, as in any way contributing to the decision of the issues the court is now engaged in trying, and in deciding those issues the court announces that it will be in no way bound by, or follow, any memorandum which either Mr. Alabaster, or the Regent of the Northern Province of Siam, or Mr. Consul Knox, may have thought proper to issue as indicative either of their opinion or the merits of this question, or of the legal status and liabilities of any parties who may have come before them. This court can recognize no Lord Paramount of Siam than the Major King of Siam with whom (and with the Second King) Her Majesty concluded a treaty of friendship, and commenced on the 16th of April 1856. No certificate of right or of title, or of authority granted by any minor authority has any more weight with this court, as legal evidence, than a certificate signed by an Assistant Commissioner or other local authority in Burmah would have with the Court of Queen's Bench in England, the same not being countersigned by the immediate sovereign or representative of sovereignty at the place of issue.

---

#### 11. WILLIAM MALINE, sworn—

I was engaged by Captain Burn in the Mhineloongyee forest, and

went to the mouth of the Yen-bine river and remained there a month, and then went to Mhineeloongyee. I was then marking timber along the streams from Mhineeloongyee down to the shoal. F. Burn was marking below the shoal. Shoay Gan was marking up above. The timber had already Burmese foresters' marks when I began to mark. There was a W on the timber. I had 40 men with myself and Shoay Gan. I was to keep possession of the timber at all hazards. I supposed so. I received no instructions from Snadden while I was in Mhineeloongyee—I did at Kyodan, he corresponded with me for Captain Burn. I took possession of 80 logs from the Burmese at Kyodan. I lost some logs 49, and got back only 80.

*Cross examined*—I took no logs that were not marked M. and Nga Hae. I know the limits of the Mhineeloongyee forest between Mee Hla Gye and the mouth of the Mhineeloongyee creek, a distance of about 100 miles. During the whole time of my working, Captain Burn was in possession of the Mhineeloongyee forests Burn had 18 or 20 men along the line, 80 men in the whole distance, say 60.

*Re-examined*—Timber cut above Mee Hla Gye must come past Mhineeloongyee. Mee Hla Gye is above Mhineeloongyee.—There are several creeks between Mee Hla Gye and Kyoph-ye, but all timber must pass down the Mhineeloongyee.

Read over,

W. H. CLARKE.

It being 3 p. m., Saturday, at the request of advocates on either side, hearing adjourned till Monday next, at 11 a. m.

W. H. CLARKE.

*Recorder.*

---

Under the special order of the Recorder of Maulmain, I place in writing my objections to the reception of the document marked W, filed this day by the witness, Mr. Burn, for the following reasons—

1st. The original compromise alluded to in the said document is therein stated to be in Maulmain. A copy therefore is inadmissible.

The document has been for months in the keeping of the defendant, and should have been produced before.

W. T. LAW,  
*Plaintiffs' Advocate.*

May 19th 1866.

---

May 21st, 1866.

Parties and Advocates present.

Hearing resumed.

12. DAVID BROWN, Colonel, sworn—

I am Commissioner of Tenasserim Division. I produce a letter from



my office addressed by Sir R. Schomburgh to my predecessor dated 28th May 1864, (defendant's advocate has no objection to its admission, and it is read by the court and marked by the Registrar A. 1,) with its enclosures A. 2, (also not objected to) A. 3, A. 4, A. 5, A. 6, A. 7, and A. 8, A. 9, eight enclosures in all. Next, letter to my address from the Chief of Zimmay, dated 24th February 1866, delivered March 22nd (objected to by Mr. Macleod for the defendant as not received by the witness in the ordinary course of business, but handed to him by the plaintiffs Findlay and McCall, and secondly that it cannot be evidence against the present defendant Snadden, and thirdly as being untranslated, contents are yet unknown, bearing *prima facie* no official seal.

(*Note by the Court.* The Court directs the documents produced to be placed on the file as A 10; but delivers no opinion or decision as to its admissability in evidence until a translation thereof has been furnished to enable the court to judge of the purport, legal effect, and connection with this suit and issues. The same ruling applies to A. 11, of which the court requires a duly sworn translation for the same purpose as in respect of A. 10; same decision in respect of A 12; ditto in respect of A 13; ditto ditto A 14.)

Mr. Law here tenders in evidence a Burmese letter written by witness for despatch to the Chief of Zimmay in April 27th 1865, but *not sent*. The court cannot at present see how this is admissable, and declines to place it on the file until its relevancy to the issues, as well as its legal character in evidence is clearly shown. This Mr. Law proposes to do hereafter.

The plaintiffs' advocate now tenders a copy of letter written by witness, 13th June 1865, to the Chief of Zimmay. This Mr. Macleod objects to on the ground that the plaintiffs could have produced the best evidence of that letter by the original letter itself, instead of given secondary evidence by production of an office copy only. Mr. Macleod contends that plaintiffs applied for a commission to examine the Chief of Zimmay, which commission they afterwards did not press on, and so, he argues, clearly shows that had they pleased to press on their commission, they could have produced the original letter.

Mr. Law in reply.

The court is of opinion that the document tendered in evidence is, under the circumstances admissable, as a duplicate original: it is produced from the office of the

official who wrote it, and the court thinks that the transmission of the other duplicate original, which was sent to Zimmay, accounts for its non-production, so far as to put in a document which, after all, is as near as possible the best evidence of its own contents and nature. Let the letter be placed on the file as A 15.

Mr. Macleod hands in a protest which is directed to be filed.

The same is filed.

I now produce the letter headed Colonel Fytche, A 16. This was enclosed in A 13, and handed to me by McCall and Hannay.

(Placed on the file as A 16 to be translated.)

I produce A 17. (which is not objected to.) I also produce two cases. (These are objected to, and the objection sustained, marked and rejected.) I produce letters from myself to Burn dated August 28th 1865, and his reply dated September 2nd.

Rejected, as on examination, they do not appear to bear on the issues. Also rejected, as not evidence, a letter addressed by Sir John Bowring to Lord Dalhousie, 17th April 1855.

Adjourned till tomorrow at 11 o'clock.

W. H. CLARKE.

Defendant respectfully urged on this court this day that no letter written by Colonel Brown to a foreign chief at Zimmay could be received as evidence, inasmuch as Snadden was not privy to its sending, despatch or contents, and that the same should be rejected.

The court refused to record petitioner's advocate's objection to the receipt of a copy, and of the contents of such. Petitioner therefore, as directed by the court, now places his objection on this petition, and prays that A. 15 be returned rejected as inadmissible as evidence in this suit.

And shall ever pray,  
DONALD MACLEOD,  
RICHARD SNADDEN,  
*Defendant.*

MAULMAIN.  
Recorder's Court,  
21st May, 1866, 2 P. M. }

THE PETITION OF RICHARD SNADDEN,  
NOW SOLE DEFENDANT IN THE SUITS  
NAMED IN THE MARGIN.

Civ. Reg. Suits Nos. 153,  
161, 162, 163, 164, 165,  
166, 170, 171, 173, 174,  
176, 184, 185, 186, 187,  
188, 193, 195, 196, 197,  
and 200, all of 1865.

RESPECTFULLY SHEWETH—

1st. That petitioner has brought with him to court day by day,

since the last steamer (mail) from Rangoon a State paper from the Consul at Rangoon for H. M. the 1<sup>st</sup> King of Siam, with certificates attached.

2nd. That this court was pleased to say the best time for filing the said paper and certificates would be when petitioner opened his evidence for the defence.

3rd. That in reference to this paper, &c., the evidence of the Chief Commissioner of British Burmah and Agent to the Governor-General of India, as well as the evidence of the Consul for the King of Siam, accredited to the local Government of British Burmah, are most essential for defendant's (petitioner's) cases.

Wherefore petitioner prays—

That under the provisions of sec. 173 of Act VIII of 1859, a Commission may issue directed to the Recorder of Rangoon, for the examination of Colonel Arthur Purvis Phayre, C. B., and of Edward Fowle, Esq., by interrogatories or otherwise, and that on the return of the same the evidence of the said witnesses may be filed in the cases noted in the margin.

And shall ever pray,

DONALD MACLEOD,

*Petitioner's Advocate.*

22nd May, 1866.

---

*The 22nd May, 1866.*

13. DAVID NICHOLAS, Clerk of Court, sworn—

I am a sworn translator of this court, licensed to translate from Burmese into English, and English into Burmese. I have examined the translation from Burmese into English of documents A 10 to A 16. They were originally made by McKertich, who translated from Burmese into English, and I certify them as correct. To the best of my knowledge the originals of all, except A 15, are in Siamese. The originals of A 15. and A 16 are from Burmese into English. The originals of A 10 to A 14 inclusive are in Siamese character. I am not a sworn translator of the Siamese language. I have no means of knowing if the translations of A 10 to A 16 into Burmese from Siamese are correct or not. They are translated and attested from Siamese into Burmese by Mounng Bain, assisted by Ka Nāndah, and Ko Khin, and Nga Ma. These are not sworn translators of this court, or of any court, from Siamese into Burmese. I am not aware if any of the 4 is now available.

The court intimates to the plaintiffs' advocate that documents A 10 to A 14 cannot be discriminated on was to enable the court to say whether they are admissable as evidence or not, unless they are translated from Siamese into Burmese by a sworn translator, even though the *Government*, on which Mr. Law lays stress, has accepted them as correct, and furnished them to plaintiffs as being so.

## Colonel BROWN's examination resumed—

I have now looked at A 10 and its seal. From a comparison of the seal which it bears, with that on other documents which I have received under the seal of the Chief of Zimmay, I declare that document to be, to the best of my belief, a document from the Chief of Zimmay. It was delivered to me by 3rd plaintiff in presence of 4th plaintiff, and one Bowers, and 2 natives, and other Shans. It has been recognized by me as an official document from the Chief of Zimmay. I speak in the same manner of document A 11. I also produce A 12, which I do not remember who delivered it. I believe it to be addressed to the Commissioner by the Chief of Zimmay, or to the 2 preceding ones. *Two* written—one never left Maulmain, one was sent to Zimmay. The first one never left Maulmain. It was signed, sealed, and despatched. It was given to head accountant and recalled. I myself, when Deputy Commissioner, proceeded to the Akoonwoon's house by direction of the Commissioner and got it back, in consequence of a representation made to the Commissioner by defendant. I do not remember having made a memo. on the letter at the time noting the cause of its recall. I also produce A 13, which is a document, I believe to have come from the Zimmay Chief and bearing his seal. It was brought down by some Shans, who came with one Moungh Khee, and presented to me by Mr. Law and Mr. Hannay. There was an open letter delivered to me at the same time as A 16 which I now produce signed A<sup>d</sup> Fytche, Colonel, Commissioner, Tenasserim Division, British Burmah. Mr. Law and Mr. Hannay brought with them a Shan who they said had been the bearer of the letter. I received that messenger civilly and respectfully. It is very probable I gave him a chair. I really don't recollect. I ascertained, on enquiry in my office that there was no copy of A 16 in that office, and that it has not been written by any clerk in the office. There was only one Burmese clerk in the office. It has not up to the present day been discovered who wrote that enclosure A 16. I tried to ascertain who sealed that letter, but could not do so. The paper on which it is written is not the paper to be found in government offices. I have been in Burmah since 1852. I never saw such paper in office. I am in the habit of corresponding with the Chief of Zimmay, and recognized my correspondent as Chief of Zimmay. I correspond with him direct, and not through the court of Bangkok. Such has been the practice of government officials all along, sanctioned by the *Chief Commissioner* directly and by usage. The document A and B filed in this suit I have now inspected, and ascertain that the seals impressed upon them are the same as those which I have been in the habit of recognizing as those of the Chief of Zimmay.

*Cross Examined by Mr. Macleod.*—I have never myself seen the Zimmay Chief, and know nothing of him of my own personal knowledge. I have no official knowledge of the practice in respect of the King of Siam, or his powers, or jurisdiction. There is no treaty with Zimmay. Zimmay is one of the 5 Laos states. A letter has been received from Government about communications with foreign chiefs. I remember 3rd plaintiff going to Bangkok. I gave him a letter to the Prime Minister of Siam. I had not as far as I remem-

ber at that time sat in the case judicially with the late Recorder. It is nearly a year ago. I forget the month. I believe I have now no copy of that letter. I had one, but it was unimportant, and I tore it up. It was in English—a private note—no record of it is in my office. I do not know the Prime Minister personally, but I have received letters from him. I never remember receiving private letters from him, but only in his official capacity. I believe what I wrote had no reference to the Mhineloongyee case. I think it is most likely I signed it with my official designation.

Adjourned, 3-48 P. M., till to-morrow at 11 A. M.

W. H. CLARKE.

---

23rd May, 1866.

Case resumed. It being proposed to examine Colonel Brown in reference to the Siamese documents, it is necessary that the accurate rendering of these documents into Burmese should be duly proved. The court therefore interrupts Colonel Brown's examination to enable plaintiffs' advocate to lay the contents of these documents before the court. Calls

14. NGA MOUNG, sworn—

I can read the Shan language spoken at Zimmay. Document A. 13 now put into my hands is in that language. I attended the Commissioner's court to translate that document A. 13. I read it out aloud in the original to one Ko Byne, who took it down in Burmese as I read it out in Shan. Ko Byne understands the Shan tongue when he hears it spoken, but cannot write Shan. I read A. 13. to Ko Byne carefully and truly. That was the original I read out.

*Cross Examined.*—I can write Shan imperfectly. I do not know of any better Shan scholar here than myself. I can read and write Burmese a little. My translation was recorded by Ko Byne, and also by a Thoogyee who assisted in the process. It was the Thoogyee who recorded the translation, but who did not understand what I was reading. I signed Thoogyee's Burmese version, as I was directed to do so by the Commissioner. I did so in obedience to the Commissioner's instructions.

*Re-examined.*—It was read out to me. It was correct. I signed, because I was ordered to sign it. I can't vouch for the correctness of the translation.

15. KO KEN, sworn—

I can read Shan a little myself, but when I hear it read, I can convert it into Burmese. I can read and write Burmese.

The court is adjourned to the 9th of July for the further hearing of this case, this being the last lawful and regular day of the present Sessions.

W. H. CLARKE.

It is distinctly intimated to the parties that the case will be resumed on July 9th, in the exact state in which it is now left. All between now and then will be *tabula rasa*, and no audience will be granted to either party till that day.

W. H. CLARKE.

THE PETITION OF RICHARD SNADDEN.  
HUMBLY SHEWETH—

Your petitioner prays that the Court will grant him an attested copy of the last ruling of the High Court in the matter of petitioner being made sole defendant in the Mhineoongyee cases.

And your petitioner as in duty bound  
will ever pray.

RICHARD SNADDEN.

Maulmain, }  
17th July, 1866. }

Granted,

J. K. MACRAE,  
*Registrar.*

18th July, 1866.

Suit for 52 logs of timber valued at Rupees 3380. Plaintiffs file a list of witnesses and pray that subpoenas may issues for their attendance on the 23rd instant being the day appointed for the hearing of the above suit.

NAMES.	OCCUPATION.	RESIDENCE.
D. Brown.....	Offg. Commr. T. D.....	Maulmain..
*M. J. Sly.....	Asst. Consvr. of forests...	Kadoc.....
*C. O. Johnstone.....	Forester.....	Maulmain...
Ko Khine.....	Trader.....	Do.....
Nga Nwai.....	Do.....	Do.....
Nga Moung.....	Do.....	Do.....
Nga Bain.....	Do.....	Do.....
Ko Nan Dah.....	Do.....	Do.....

\*To produce Books containing list of hammer marks issued and the dates thereof, and also Books showing the arrival of Timber at Kadoc and of the applications for certificates.

†To produce all documents filed by him when a defendant in Reg : suit No. 84 of 1864 Shoay Gan vs. R.\*Snadden and 3 others, also copies of all Petitions presented to Colonel A. P. Phayre, C. B., Chief

Commissioner B. B., against the late P. C. Burn and others with all papers relative thereto.

W. T. LAW,  
*Plaintiffs' Advocate.*

Maulmain, the 21st July, 1866.

Subpœnas to issue,  
D. A. NICHOLAS,  
*Chief Clerk,*

---

THE PETITION OF THE PLAINTIFFS  
IN THE ABOVE SUIT.

RESPECTFULLY SHEWETH—

That in order to prove the issues in the above suit your petitioners require the evidence of the defendant Richard Snadden, and of the production by him of certain documents hereinafter mentioned. -

Petitioners therefore pray that under the provision of section 162 of Act VIII of 1859, a subpœna may issue to the said Richard Snadden to attend court on Monday the 23rd instant, the day appointed for the hearing of the above suit, to give his evidence and also to produce the documents filed by him in Regular suit No. 84 of 1864 *Shoay Gan v. R. Snadden and three others*, more particularly a document dated 6th May 1864, old Royal Palace Bangkok; two letters dated respectively the 24th and 26th June 1865; and addressed by Messrs. Todd, Findlay & Co. to the said R. Snadden; all correspondence with Mr. Knox, H. B. M's. Consul at Bangkok, regarding the Mhyneloongyee Forests; and copies of the petitions made to Colonel A. P. Phayre, C. B., Chief Commissioner of British Burmah, by the said Richard Snadden against the late R. C. Burn and others, with all the papers relative thereto.

And your petitioners as in duty bound will ever pray.

W. T. LAW,  
*Plaintiffs' Advocate.*

Maulmain, }  
21st July, 1866. }

Granted,  
J. K. MACRAE,  
*Registrar.*

21st July, 1866.

---

THE PETITION OF RICHARD SNADDEN.

RESPECTFULLY SHEWETH—

Your Petitioner prays to be allowed to Subpœna the following persons as witnesses on his behalf :—

COLONEL BROWN.—And to produce the following documents :—  
Copy of the King of Siam's Proclamation  
forwarded by the Siamese Consul at Rangoon  
to the Chief Commissioner.

2nd. The Governor General's order regarding the  
correspondence of Commissioners of Division  
in British Burmah with the Chiefs of Foreign  
Native states.

Mr. A. DICK.—Judicial Clerk, Deputy Commr's. office, to pro-  
duce the proceedings in case No. 1 of 2nd. Qr.  
1860, *Shway Gan vs. A. Lenaine*.

Mr. D. A. NICHOLAS.—To produce case No. 156 of the Court of  
the Recorder.

And your petitioner as in duty  
bound will ever pray.

RICHARD SNADDEN.

Maulmain, 23rd July, 1866.

Ordered accordingly,  
W. H. CLARKE.

The Recorder directs (July 23rd) that a commission  
do issue to the Commissioner of Pegue to take the evi-  
dence of Colonel Phayre and Mr. Fowle, as prayed for.  
Interrogatories to be filed on or before the 30th instant,  
and cross do. On the earliest day thereafter.

W. H. CLARKE.

*July 23rd, 1866.*

Case resumed.

Mr. Dawson appears as advocate for plaintiffs.

Mr. Macleod for defendant Snadden.

Translation of A 14., attested by sworn translator Ni-  
cholas, handed in by the Registrar. Mr. Macleod wishes  
the court to note certain interlineations and erasures.

D. NICHOLAS, sworn—

(The witness complains that he has not received his  
batta. This appears to be the case, and the court will  
support it.)

I hold in my hand a Siamese writing (A 14.) on leaf, and two  
translations (identical) thereof in Burmese : and finally a translation  
by me of the Burmese version into English. I can swear that version  
is correct, but I can say nothing to the translation from Siamese into  
English. The same of documents A 10., A 11., A 12., A 13.—A



16. is also correctly translated, there are two copies of A 14. I suppose one was made as the other had erasures. I translated A 14 from the copy with Colonel Brown's initials.—I translated from the corrected copy as it stood corrected. I had no Shan or Siamese with me at the time. If the Burmese version is incorrect my English translation may also be incorrect.

### Ko KEN's examination resumed—

I have now looked at A 10. I translated A 10. from Shan into Burmese, and the translation filed with my signature or mark at the end is my translation. It is a true translation of the Shan document ; so also of A 11. Moungh Pho took down the Burmese version from my dictation, and Moungh Nway read out the original in Shan. I have since re-examined all the versions a second time with the Sayagee at this court under the orders of the Registrar.

Mr. Nicholas here undertakes the interpretation, as it appears that Mr. D'Silva has not a familiar knowledge of the local dialect. Mr. Macleod objects, and the court notes the objection at his request.

On both occasions Moungh Nway read out the Shan.

*Cross examined.*—I wrote what Moungh Nway read out, and nothing else. I wrote a draft in pencil and Moungh Pho copied it fair, my pencil draft is not filed. I destroyed it, so of both documents, there was no one competent to read Shan and Siamese and translate from one to the other simultaneously, except myself. I have a perfect colloquial knowledge of the Shan.

### 16. MOUNGH NWAY, sworn—

I know last witness. I read A 10. out in this court, in this room, to the last witness Kho Khen, so also A 11. Both are in Zimmay Shan dialect. Moungh Khen wrote down as I read in Burmese, there were 2 other translators whose names I don't know.

Adjourned till tomorrow at 11 o'clock.

W. H. CLARKE.

*July 24th, 11 a. m.*

Resumed.

### 17. MOUNGH BAING, sworn—

I understand the Shan language. Document A 12. now shown to me I am not sure if I have ever seen before, the Burmese writing attached to it is not written by me. The original Siamese document A 13. was translated by me into Burmese from Siamese. Was the same in respect of A 14. I was assisted in translating A 13. by the same way read to me by Nga Moungh, and in respect of A 14. by Kha Nan, (now present) and Nga Moungh (also identified) I have now looked at document A. I do not know the language Shan. I am a Shan by birth and have a colloquial knowledge of the language, but cannot read or write it. The original Shan was read out to me

by Kha Nan, and recorded by me in Burmese, so also about document B.

*Cross examined.*—I can only speak as to the Burmese versions. I believe Nga Ken read out the Shan correctly from my knowledge of the idiom, and not from my knowledge of the character; they told me they have read the documents correctly.

Read over,

W. H. CLARKE.

### 18. NGA KHAN, sworn—

I can read Shan but not Burmese. I have read A 14. that is in the Shan language. I read it out in Shan to last witness, and he reduced it into Burmese. I swear I read it out correctly: I am a Shan by birth. I did not read out A nor B.

W. H. CLARKE.

The plaintiffs' advocate now proposes to recall and re-examine on a new point the witness Nga Moun, who was examined on the 23rd of May. Mr. Macleod objects to the recall and re-examination of a witness who has already been examined and cross examined. After declaration of issues in the suit, no new issue having been fixed, the court considers that if the witness as stated by plaintiffs' advocate, called to prove a fact necessary to the progress of the case, independent of his previous testimony, and on a new point wherein his evidence is necessary, owing to the absence of the regular witness, who would have been called to the same fact, such witness' evidence ought to be received subject to comment and appeal. The plaintiffs' advocate desires to call the witness to attest the translations of documents A., B., and A 12., in consequence of the absence of the original translator, and the court directs that the witness do retire, with the Recorder's clerk into chambers, and deliberately go over the documents before speaking thereon.

### 19. MOUNG BYAW, sworn—

I am a forester. I have been to Zimmay. I was last there 4½ months ago. I went with Mr. Findlay, the 3rd plaintiff in this suit. Captain Bowers accompanied us, as also Kho Tha Kway, Ko Kee, and Moun Toke, and Nga Pyke, and 40 others. I saw the Chief of Zimmay. I saw and heard a Siamese official Penyakín, read out a Siamese document, which after being read was sealed—sealed by the Chief of Zimmay personally in my presence. I do not understand the Shan or Siamese language. I could identify that document I so heard read, as I put a mark on it myself. It was also

marked by Mounk Tha Kway, and a Chinaman (the same now shown to me). The document was then handed, I did not see to whom. I saw it afterwards at a Zayat (resting house) I saw 4 or 5 documents so signed by the Chief, all of which I put my mark to excepting one, for purposes of identification. I marked 4 inside and one on the cover. I have now looked at the seal on A 10. I saw that seal impressed by the force of the hand of the Chief of Zimmay himself. I have also looked at A 11. I identify that as one I saw signed by the Chief of Zimmay, and point out my mark of identification. I also saw the Chief of Zimmay impress his seal on A 11.

*Cross examined.*—I can't read Shan. I only recognize these documents by the marks I made on them, which I made at the Zayat, about 2 hours after. I saw them given to Findlay by Penyakin. I did not mark the documents at the time they were handed by the Chief to his officer. Two or three were sealed on one day, and two or three on the following. It may be two or three days between the signatures of which I have spoken. Findlay had two interviews in my presence with the Chief of Zimmay, or it may be three. Findlay also sometimes went alone. The first he paid was visit of courtesy and business. Mr. Findlay could not speak Shan, and he spoke through a clerk who is now available, and to whom communication was made by Kho Tha Kway, Ko See, or Kambila. The sealing of the documents of which I have spoken was on a subsequent occasion but not on the last—only on the middle occasion. These two documents were sealed on the same day, the middle occasion. No letters were sealed the first day—second day, two or three were sealed. Last or third day these two were sealed. We, I and my friends, marked all that were sealed in one point. I put the same mark on all the papers I so identified. I have no special way of knowing one of the papers from the other. Each had two seals, one large and one small. I know these two papers by the size of the paper on which the seals are impressed. When I marked the envelope of A, the contents were sealed. I did not mark the contents of the envelope so as to recognize the contents. I have no interest with plaintiffs, but general friendship in trade. I owe them nothing, and they owe me nothing. There is a floating balance between myself and Mr. McCall, as to a recent sale of timber, the exact amount of which I cannot state, say Rs. 40,000.

*Re-examined.*—This transaction was since my evidence.

W. H. CLARKE.

## 20. JOHN WAH, sworn—

I am a Chinaman, but can talk English well. I have been to Zimmay, only once. That was about six months ago. I went with Mr. Findlay, Captain Bowers, and a number of foresters, among whom were Kho Byaw, Ko Tha Kway, Kho See, Kho Pyke, and others, 40 or 50. We saw the Chief of Zimmay, four or five times. I saw him seal, or impress with a seal certain documents, four or five I believe—three or four or five. I should know those documents again if I saw them. I initialed them in English J. W. I have

now looked at A 10. and A 11., and point out my initials on both. The initials C. B. above my J. W. on the envelope A 10. were signed by Captain Bowers in my presence. I also swear to his initials on A 11. I saw the Chief himself go to his inner room, bring out his seal, and himself impress it on the documents A 10. and A. 11. This would be about 2  $\frac{1}{2}$  p. m.

*Cross Examined*—3 or 4 papers were initialed by me—given to me by Mr. Findlay. We put our initials at Findlay's request, as our attestation that we saw the papers signed by the Chief. The Chief signed all the papers. I think on 2 days—they were sealed as they were ready—I put my initials where we put up, at the Zayat. After sealing, the Chief put some of the documents in envelopes, which he also sealed, some the Chief handed out without envelopes. I think there was only one envelope. The papers were all the same colour—some small, some large. I put my initials on all that were given to me—how many I can't say. I cannot recollect how many papers were given to me. Four or five of us put our initials. I was at that time Findlay's servant.

W. H. CLARKE.

## 21. MARTINUS JOHANNES SLYM, sworn—

I am Assistant Conservator of Forests at Kadoe. I know all about the hammer marks—hammer marks are a way of distinguishing one party's timber from another's. 99 the sickle marks, belonged

originally, under No. 119, to Nga Tha Dway. On the 11th January 1861, the old registration was in the name of Tha Dway. (1338) was the original number. The last registration was on the 1st of June 1866 in the same name. A Kho khine has to my knowledge Nga Tha Dway's certificate. (hammer mark) in his possession, or had, but I believe it is now with Mr. McCall. The hammer mark is not transferable. The mark M is registered on 27th January 1865 for the first time, No. 775, in the name of Mr. Snadden. The mark Nga Hae was first registered on 30th, August 1864 No. 424, in names of Captain R. C. Burn and Shoay Gan. On January 27th 1865, both appeared before me, and Shoay Gan stated that he had transferred his interest in that mark to Captain R. C. Burn solely, and Shoay Gan's name was cancelled from that date. After I had heard of Captain Burn's death, Mr. Snadden, the defendant, applied at the office to have the mark *Nga Hae* registered in his name. I could not do that. Mr. Snadden has not since that date registered any mark in his name, but on the same day as he applied for the mark of Nga Hae, he registered X as his hammer, that was on 30th May 1866 (No. 134.) There was a mark S, and Mr. Snadden has had much timber from Kadoe, during past years, under that mark S. The timber rules require the mark, to be renewed every two years. S has not been so renewed in the past two years. I am not aware that any timber marked X has come down since the 30th May 1866. I should refuse to enter any timber coming down with a mark of which the registration had not been renewed at the end of 2 years. Mr. Snadden has applied to me for permits to save timber marked

Nga Hae, but I could not grant them. Timber bearing marks Nga Hae and M has been entered by Mr. Snadden.

Further hearing adjourned till 11 a. m. tomorrow, and Dr. Slym requested to consult his books and papers to give testimony on certain points.

W. H. CLARKE.

---

THE PETITION OF DONALD MACLEOD,  
GOVERNMENT ADVOCATE, AND AD-  
VOCATE PRACTISING IN RANGOON  
AND MAULMAIN.

HUMBLY SHEWETH—

That petitioner has received intelligence from Rangoon which renders it a pressing necessity to return to Rangoon for a few days.

That the Mhyneloongyee cases petitioner believes have no clear days for them before the 6th proximo.

That no committals to the Sessions remain untried at present here.

That petitioner will be back by the mail steamer leaving Calcutta on the 1st or 2nd of August. Wherefore petitioner prays that this honourable court, as a matter of indulgence, will be pleased to grant petitioner permission to proceed to Rangoon, and that no cases in this court in which he is engaged be heard during his absence or until the arrival of the mail steamer expected here on the 9th instant.

And petitioner will ever pray,

DONALD MACLEOD,  
*Advocate.*

Maulmain, the 26th July; 1866.

---

*July 26th, 1866.*

See proceeding below. Let this be filed in No. 153.

W. H. CLARKE,  
*Recorder.*

Read petition of Mr. Donald Macleod, dated July 26th 1866, requesting that the Mhyneloongyee cases at present standing for the 6th proximo may, under pressing necessity, be postponed for a few days.

The Recorder has carefully considered this application, and has, through the Registrar, submitted it to Mr. Law, the plaintiffs' advocate, for remark as a matter of courtesy to which Mr. Law is clearly entitled.

The Recorder understands that Mr. Law objects to the postponement applied for, but after mature reflection the court feels bound to extend to Mr. Macleod the same courteous consideration which he would extend under similar circumstances to Mr. Law, and grants the

postponement which Mr. Macleod has shewn, is not applied for on insufficient grounds.

The Registrar is therefore requested to advance these cases from Monday the 6th proximo to Monday the 13th proximo.

W. H. CLARKE,  
*Recorder.*

#### THE PETITION OF PLAINTIFFS.

RESPECTFULLY SHEWETH—

That by the ruling of the High Court, on the reference made by this court in the case of Sayah Loo *versus* Nga Paw Loo and others, it appears to petitioners necessary to give in evidence the forcible taking of petitioners' property in the Shan states by Burn and others acting for defendant, and as this court has hitherto prevented any such evidence being given or recorded, plaintiffs are prepared, should the court be pleased to admit such evidence (and the defendant deny the fact) to prove that the timber in litigation was taken possession of from plaintiffs by fraud and force of arms.

And as in duty bound,  
shall ever pray,

W. T. LAW,  
GEORGE DAWSON,  
*Plaintiffs' Advocates.*

Maulmain, the 13th August, 1866.

---

*August 13th, 1866.*

Advocates for both parties present.

Dr. SCYM's examination resumed—

On the 24th June 1865, Mr. Snadden made his first entry under marks M and Nga Hae. 12 logs—altogether up to date about 2500 on a rough guess. Of the 12 logs one was marked lazalay. On 27th July 1865, he entered 28 logs as agent for Burn, of which 3 logs were marked lazalay. 1st August, 90—agent for Burn; 6 marked lazalay. 4th August 27 logs as agent for Burn, 15 marked lazalay. 7th August, 58 logs, agent for Burn, 11 lazalays. August 12th, 71 logs, 10 lazalays. August 12th, 36 logs, 3 lazalays. September 1st, 24, 2 lazalays. September 8th, 56 logs, 19 lazalays. Total 70 up to September 8th. So far as I believe the lazalay mark first occurs in our books in September 1862. On which month 111 logs came under that mark, entered by Mounng Khine, the plaintiff, (Mhyneloongyee timber) all timber marked Nga Hae does not also bear the mark M.

It now appears the witness has not prepared a statement which plaintiffs require. He is allowed till tomorrow to prepare that statement. Mr. Macleod objects that

the witness has been sworn and partly examined in chief, and ought not now be permitted to leave the court to prepare a statement. The court will consider the objection hereafter, and hear Mr. Macleod and Mr. Law thereon, but it distinctly notifies to plaintiffs' advocate that Dr. Slyn's evidence whatever it may be, must not be delayed beyond tomorrow.

Plaintiffs' advocate now proposes to tender evidence of the "*force*" which they allege was used by the defendant in appropriating this timber within the foreign state, and they do so under the authority of the ruling of the High Court in the case Sayaloo, dated June 23rd 1866. Evidence to this effect was excluded by the court on the 19th May as not relevant to the issues, and is now tendered by Mr. Law in reference to the subsequently received ruling of the High Court. Mr. Law contends that under the terms of the 13th issue declared by Mr. Kennedy, the court can entertain the evidence as to "*force*" which he now tenders to the court.

The court over-rules this, and considers it does not comprehend the question.

Mr. Law then called upon the court to declare an additional issue under section 141 of Act VIII of 1859.

Mr. Macleod heard against the application.

Referring to Mr. Kennedy's ruling on the application of Mr. Barrister Marshall, on the day the issues were declared, wherein he distinctly declined to grant an issue on the same points as would virtually be included in the issue now suggested by Mr. Law, the court decides that it is not called upon, under the 141 section of Act VIII of 1859, to declare at this stage of the case the additional issue now demanded by the plaintiffs. Evidence proceeded with.

## 22. NGA MOUNG, resworn and recalled—

I have seen document A before. I examined it last hearing in the Judge's room. The Burmese translation of that was on my examination of it correct. So of B also. So also of document A 12. The Burmese version of all three documents is a correct version.

*Cross examined*—I can read Shan, but cannot write it. I understand the Shan language thoroughly. I can read Shan, but cannot render it accurately in Burmese.

*Re-examined*—I can speak Burmese. I can write Burmese imper-

fectly. I cannot translate from Shan into Burmese in that way perfectly.

23. R. SNADDEN—

Produces document (1) and no other document.

24. C. O. JOHNSTONE—

Has no documents to produce.

Adjourned till tomorrow.

W. H. CLARKE.

August 14th, 1866.

Proceeding resumed.

Dr. SLYM further examined—

I have prepared the necessary statements, and now hand them in (hands in 2 returns which the court directs to be marked P. O. I swear they are correct abstracts from the office books.

Mr. Macleod objects that the law has not been complied with, and reads the latter part of section 132 of Act VIII of 1859.

The court considers the abstract as admissable.

*Cross examined*—The abstract is *not a copy*. The abstract is *not a copy of any entries*.

*Cross examined*—My abstract does not show all the timber entered by Mr. Snadden. The statement or abstract is nevertheless correct. On August 1st, Snadden entered 24 logs, as per register. I have only entered in abstract 23. I have only entered those which was under the injunction of the court. My abstract only refers to such timber as were under injunction. There are several entries of the same nature. There is nothing in the abstract to show why the entries in it differ from the entries in the register. I have a great number of books. I have produced all that are necessary for the Mhyneloon-gyee case.

W. H. CLARKE,  
*Recorder.*

COLONEL BROWN, recalled, and his cross-examination resumed—

Zimmay is tributary to the King of Siam. I produce (S.)

*Cross-examined*—I am aware of that fact from documentary evidence and other sources.

The whole of witness' evidence is read over to him, and acknowledged by him to be correct.

W. H. CLARKE.

PLAINTIFFS' CASE CLOSED.



Defendant prays that Subpœnas may issue for the attendance of :—

C. O. JOHNSTONE, residing in Colvin Road, Maulmain.

J. BARKER, Deputy Conservator of Forests, Mission Road.

MOUNG YOUNG, Forester, Lower Main Road, Maulmain.

And shall ever pray.

DONALD MACLEOD,

*Defendant's Advocate.*

Maulmain, 14th August, 1866.

---

Subpœnas issued.

D. A. NICHOLAS,

*Clerk of the Court.*

14th August, 1866.

---

*August 15th, 1866.*

Advocates on both sides present.

Mr. Macleod addresses the court, and first reserves the question as to the effect of the order of Mr. Recorder Kennedy dated the 3rd October 1865, in reference to the 11 suits therein enumerated following the finding of the court in this suit.

Mr. Law in answer to the court states—"I am willing and consent certainly that the Mhineloongyee cases should as a whole follow the finding of the court as the case No. 153."

Mr. Macleod does not assent.

The court calls on Mr. Macleod to proceed with defendant's case in No. 153.

Mr. Macleod hands in documents L L, M M.

Mr. Law objects to the documents M M as inadmissible as evidence, being only extracts of a document the whole of which might be produced, and for the non-production of which no reason is shown: and also on the ground that there is no proof of the consular seal; and also for want of proof that it was signed by Phra Ray See, as that Phra Ray See is the chief officer in Bangkok.

Mr. Fowle is at Rangoon. M M may remain on the file; but subject to proof hereafter.

Mr. Macleod tenders in evidence the document W. which was produced by witness Burn on the 13th of May.

Quotes 18th and 19th Vict. C. 42. § 3. Reads Taylor on Evidence, vol. 1, part 1, chap. 2., pp. 18—19.

Having heard Mr. Macleod and Mr. Law in reply to him, the court rejects the document W as not being a document embraced within the tenor of the terms of the act. The *Certificate* of Consul Knox is not a certificate in testimony of any oath, affidavit, affirmation or notarial act done before him, but merely a certificate of his opinion and conclusion on certain facts which might have been regularly proved in due course. Document W is therefore rejected, and returned to defendant's advocate.

A. W. DICK—

Clerk of the Deputy Commissioner's court, produces record No. 2 of the 2nd quarter of 1860, in a suit between Lenaine plaintiff and Shoay Gan and others defendants.

Document S. A. tendered in Siamese. No. proof of its translation being correct.

Postponed for tomorrow.

W. H. CLARKE.

The order above recorded is cancelled and case proceeds, a translation with my name and that of the advocates for parties written across it being admitted on all sides as a true translation of S.A. (X) 1220—1230, English, April 1859—1869.

#### EVIDENCE FOR DEFENDANT.

##### 1. Defendant RICHARD SNADDEN, sworn—

I have been connected with timber operations concerned with Mhyneloongyee timber for 5 or 6 years. I received a permit to cut timber in 1852, but never entered on it. I believe that it was publicly notorious that I was so empowered, as my documents were recognized by the Government of Mhyneloongyee who was in charge of the forests. Chow Rajapoot's father was sick. The Mhyneloongyee forests are in Siam.

(Question—Is it matter of—and was it so when you were in the country? when was it that the Mhyneloongyee was subject to the King of Siam? Question disallowed.)

My interest in the Mhyneloongyee timber is derived under document Q, and Lenaine transferred his interest to my firm. I saw him, Lenaine, sign Q.

(Questions put as to Mr. Dawson's name which is written at foot of Q. Mr. Snadden admits he did not see Mr. Dawson write that

signature, and the court rules that he cannot be asked the circumstances under which it came to be written.)

Mr. Dawson subsequently admitted that was his signature. The initials above are Captain Burn's initials. I have seen him write the Burmese signature. I do not identify. When I had the forests I worked them as well as I could, and got a few logs down. I felled some of the timber which Shoay Gan had killed. I then made over my rights to Burn and Shoay Gan—yes first to Johnstone. I file the document on which I made the forests over to Burn and Shoay Gan (S) I am experienced in forest work. We commence killing by girdling, and it takes 3 years before you can fell. Such timber went float for 3 years. The timber has been caught by my people at Kyodan, and raft it. I defrayed all expenses of bringing timber down.

*Cross examined*—I have never been to the Mhyneloongyee forests since 1852. I got my right from Lenaine. He had a grant from the Chief of Zimmay, which he transferred to me. I do not know whether that was antecedent or subsequent to Shoay Gan's grant. I never saw any grant given to Johnstone by the Chief of Zimmay. I have had Lenaine's grant in my possession, but I do not know its contents. I never commissioned Johnstone to go to Zimmay on my account. When he was at Zimmay he was working in his own interests, not in mine at all. S. A (X) was left with me by Captain Burn in 1865. I never had it in my possession before that. S. A. is Shoay Gan's ten years' permit, and is the one which was transferred to me by Lenaine before 1865. I had a duplicate of S. A. on a palm leaf. I do not think that palm leaf was the original grant of Chow Rajapoot. Mr. Lenaine led me to believe that it was so. I gave it to Captain Burn. In 1863 Shoay Gan, by public advertisement, recalled the assignment of his interest to Lenaine. I think at that time I held Shoay Gan's grant. At the time I filed my answer in No. 84, the permit was filed by Shoay Gan and Burn. I had the transfer by Shoay Gan to Lenaine then in my possession. I wrote or signed that answer on my belief founded on Lenaine's representation. I know that the Siamese government gave an order to the Chief of Zimmay directing him to issue a document to Shoay Gan and Burn to uphold their interest in the forests. I did not keep a force at Kyodan to prevent the Burmese catching my timber. Maling was in Burn's employ, not in mine, and I heard a Mr. Voight also went to seize timber. The people who took possession of my timber, did so half way down the river towards Kadoe. I am still endeavoring at Kyodan to catch timber marked M and Nga Hae. Salvage rates are fixed by government at different villages, but they are not strictly attended to—from 4 as. to Rs 2 per log. I have not paid for salvage above the ordinary rates. The highest I ever paid at Kadoe was Rs 4. I remember a suit No. 84, and also No. 43 of 1864. In the latter case I was a witness for the defendant. In 84 I was a party. I did deny Shoay Gan's right to the Mhyneloongyee forest. I have now looked at document A 3. I filed the original of that in the present suit. I purchased Lenaine's interest, which he acquired from Shoay Gan by purchase, in the forests from Lenaine 21st April 1863. Shoay Gan's sale to Lenaine is April 14th 1860. Shoay Gan sold to Lenaine April 14th, 1860. I have read the translation of A 3. That compromise is dated April 16th, 1864. The transfer to Lenaine was rescinded or recalled by

public advertisement, which accounts for the compromise 4 years and 2 days after the conveyance. The dispute between Shoay Gan and Lenaine in 1864 was that the transfer was a "*time transfer*" only. I was not made aware of that till a subsequent period. I was not in court when Shoay Gan gave his evidence. I was kept out as a witness. I saw Shoay Gan this morning.

Postponed for tomorrow morning (4½ p. m.)

*August 16th, 1866.*

### Examination of SNADDEN, resumed—

I was subpoenaed to produce certain documents. I have not those documents in my possession. To the best of my belief none of those documents have ever been in my possession. Most of them never existed, and are mere myths. The only one enumerated which I ever had, at the time I was subpoenaed, I have handed into Court. I find certain documents on the file of No. 84, but whether I filed them or not I can't say. I had in my possession for a couple of days a document dated "the old Palace of Bangkok," but I do not recollect the date of the document. That possession by me was between June and July 1864. I received it from Mr. Johnstone in person, and to him I returned it. On my oath I have not the slightest knowledge where that document is now. I have now N N in my hands. I cannot swear whether N N is or is not a correct copy of that document. I have handed to Court a letter from Todd, Findlay dated June 24th, 1865. I received no letter dated June 26th. I have that dated June 27th, (OO) produced. I made an agreement with Shoay Gan and Burn respecting the forests (Exhibit S on file of present suit.) That is signed by me as representative of R. & W. Snadden and Co. I knew the contents of it when I signed. My stipulation in that agreement was that the purchasers of our interest should pay off the claim of Johnstone on the property. I sold the forests to Johnstone in 1863, but he could not work them from the want of funds, and I proposed to take back the property from him and give him a release in full. At this time, Burn and Shoay Gan wished to join issues with me, and they proposed to take my right, title, and interest, and to come to a settlement with Johnstone independent of me, or in addition to my claim. At the date of the sale he had no claim, he, Johnstone had settled the claim simultaneously with the date of the document. I do not know the details of the settlement of Johnstone's claim. I gave Johnstone a release, and took back my papers. I cannot say whether that was before or after the agreement with Burn and Shoay Gan was executed. The release was signed by me only. I was not at that time on speaking terms with Mr. Johnstone. All was done by intervention of Captain Burn. On the 24th of January 1865 I came to a written settlement with Johnstone, which is filed and marked M. I was not at that date on speaking terms with Johnstone. From that date to a month, or it may be 2 months ago, I have not been on speaking terms with Johnstone. I recollect Johnstone going to Bangkok, I think in 1863. He returned I think in 1864. I advanced him monies to work the forests, but not money to go to Bang-

kok. My advances, to which I have sworn, were long subsequent. The time when he (Johnstone) could not work the forests were long subsequent to my advances. I advanced to him between 20 and 30 thousand Rupees. Johnstone, I believe, proceeded to Zimmay after these advances. I do not recollect whether I received letters from him from Zimmay. I do not recollect whether Johnstone pleaded poverty to a debt in court in 1863. I do not recollect whether I was his security or not. I believe Johnstone spent at Bangkok monies I had advanced him for forest purposes. When I sold Johnstone the forests I retained a lien on them for my advances. (O) is the English translation of the transfer from Shoay Gan to Lenaine. I purchased from Lenaine, and (O) was a portion of my muniments of title. I do not find in O that Shoay Gan's transfer was a "*time transfer*." At the time I purchased the forests from Lenaine, I purchased the remainder of the lease without any reservation. I purchased the whole of Lenaine's interest whatever it was. I did not see the document O for at least one year after I bought the forests from Lenaine. I see Dawson's signature and Burn's initials both on O. I received the original of O in the house of Mr. Dawson, from Lenaine. I think I purchased Lenaine's interest in April 1863, and received O about a year afterwards. I knew of the existence of O but could not get it. I got from Lenaine a number of Shan documents, palm leaves, and memoranda of all kinds. I do not recollect if I got Lenaine's grant translated. I know Moung Nyne. I do not recollect his making a translation. Mr. McKertich has translated documents for me; so has Mr. Nicholas. I advanced Lenaine a lakh and a half of Rupees—he representing to me he had logs 5000 in the forest; and subsequently more on a second bond to work the forests. I subsequently took over the forests for balance of monies due to me. I did not examine the documents he handed to me. I took over the memo, he then owed me a balance of over 2 lakhs. I did write to the Chief of Zimmay after my purchase. I also wrote to Chow Rajapoot: I have no copy of that letter. At the present time Shoay Gan has an interest in this timber. I do not know who R. C. Burn's representatives are, nor if he made a will. I had a power of attorney from R. C. Burn when he went away. I got Colonel Fytche to recall a letter which he had addressed to the Chief of Zimmay on the ground that I believed that if that letter went it would cost Burn his life. Johnstone is not in my debt. I have no agreement to pay him a price on result of this case, nor any such arrangement with the late R. C. Burn. I know all the timber now in dispute in these 24 suits. I claim it by purchase from Burn and Shoay Gan. Maling was with me when I went to Zimmay in 1852. I purchased timber then from Chow Rajapoot—from the Mayzaleen Creek. I had subsequent litigation about that timber with R. Hannay in the Commission Courts. I lost the suit eventually. Shoay Nan Shin and Chow Rajapoot are two distinct persons. The former is Chief of Zimmay. My purchase in 1852 was from Chow Rajapoot—who was acting for his father the Chief of Zimmay—who was then. The present Chief is another person altogether. The Chief died about two years after. The present Chief of Zimmay used to be called Chow Than Keogh. He is a connection, but no blood relation of Chow Rajapoot. There

are three divisions of the Mhincloongyee District. The eastern side, called Maylahgyee, was held by the elder brother of Chow Rajapoot. The western side by the younger brother of same, and the rest down to the mouth of the stream by Chow Rajapoot himself. I am speaking of 1852. I am not aware there has been any change since then. They *must* have changed, as I have heard of the death of the elder brother. I have now looked at A 8. I did not work my permit then as it was for too limited a time. My permit then was granted by Chow Rajapoot in his own right. One Mounng Pandee has used the mark M. since Burn's death. That is my mark.

*Reexamined.*—When I made my arrangements the only known interests in the forest were my own and Johnstone, and Shoay Gan and Burn. It was our mutual interest to amalgamate. The amalgamated interest was represented by Burn and Shoay Gan. During the whole time I was in treaty with them, all parties treated these forests as coming within the province of the grant. The usual time for killing timber is from January to about April, and for marking during the hot season from June onwards. The cancelling notice to which I referred in my examination was published in 1863, and I first heard of Todd Findlay's interest in the Mhincloongyee forests in June 1865. Of the logs 5000, which I mentioned in my examination as having been stated by Lenaime to be cut and ready, I have received from time to time up to date about 4000. I believe Chow Rajapoot is still alive.

Read over by the witness, and admitted by him to be correct in terms of the 172nd clause of Act VIII of 1859.

W. H. CLARKE,  
*Recorder.*

*Maulmain, 18th August, 1866.*

Plaintiff, Mr. McCall, and his Advocate, Mr. Law, present.

- The Clerk of the court is directed to read out the two certificates, marked X a. and X b., sent in by the Civil surgeon, certifying that the defendant Mr. R. Snadden, and his Advocate Mr. Macleod, are unable to attend court this day for reasons stated therein.

The certificates having been read out, the court directs that the Mhincloongyee suits be postponed to Wednesday next the 22nd instant.

W. H. CLARKE,  
*Recorder.*

**X a.**

Certified that D. Macleod, Esq., is suffering from an attack of diarrhea, and unable to attend court.

GEORGE MARR, M. D.,  
*Civil Surgeon.*

Maulmain, 17th August, 1866.

**X b.**

Certified that R. Snadden, Esq., in consequence of the exertion he has undergone during the last four days in attending and giving his evidence in court, is suffering from a relapse of "Kidney affection" and unable to attend court.

GEORGE MARR, M. D.,  
*Civil Surgeon.*

Maulmain, 17th August, 1866.

*Saturday night, 9 p. m., August 18th, 1866.*

**IN THE MILNELOONGYEE CASES.**

By a communication which the Recorder has had the honor to receive from the Chief Commissioner, the Recorder learns that high officer will, in a few days, leave Rangoon for the frontier on business of a political character.

As only one week remains unexpired, therefore, of the present Maulmain sessions, it becomes necessary that the interrogatories filed by the defendant's advocate in the above cases, addressed to the Chief Commissioner and Mr. Siamese Consul Fowle, should go forward to Rangoon by the "Ava" steamer, leaving Maulmain on Tuesday, and be returned hither by the regular Mail steamer due on Friday, so as to enable the Court to deliver Judgment on Saturday.

If, therefore, plaintiffs' Advocate desires to file cross interrogatories, it is necessary they should do so on Monday next. A special Commission will be directed to the Registrar, Rangoon, to administer the interrogatories, and to return them by special messenger as soon as taken to this court.

The Registrar will be so good as to communicate this memo at the earliest possible moment to the advocates on both sides, and to call on defendant's advocate to pay in-

to court Rupees 100, to meet the taxed costs of the Commission, and to be costs in the cause.

CIRCUIT HOUSE,  
Moulmain.

W. H. CLARKE,  
*Recorder.*

This Memo to be filed in the case, No. 153, and a copy delivered to each Advocate at the earliest possible moment.

W. H. CLARKE.

THE PETITION OF R. SNADDEN,  
DEFENDANT.

Respectfully Sheweth—

That this court rejected exhibit W. deeming the same not to be authenticated as a notarial act by Mr. Consul Knox.

2. That petitioner humbly submits the same is to all intents and purposes a notarial act authenticating the seal of the Regent of the N. E. portion of the Kingdom of Siam, and certifying to certain "circumstances," the proper description of notarial act being to authenticate or certify some *document or circumstances*.

3. That by the George IV, chapter 87, sec. 20, British Consuls abroad have power given to do all such notarial acts as any Notary Public may do, and the same are good and valid in all parts of Her Majesty's dominions, and of the same force and effect as if the same had been had or done before any Justice of the Peace in any part of the United Kingdom, etc.

Therefore petitioner prays

That this court will cancel its previous order in regard to exhibit W, and receive the same as by law required in evidence.

And shall ever pray,

DONALD MACLEOD,  
*Defendant's Advocate.*

August 20th, 1866.

Filed by defendant's advocate.

Let this stand on the file, as the court cannot, in its opinion, grant the prayer of the petitioner, and declare admissable as evidence a document it has solemnly rejected. If the court has decided wrongly, the error is good ground for appeal.

W. H. CLARKE.



*Maulmain, August 22nd, 1866.*

Defendant's evidence resumed. Parties and their advocates present. Defendant's advocate puts in the suit No. 156 of 1865.

The Moungh Khine of the plaintiff's declaratory suit is admitted to be the same Moungh Khine in the present suit.

Mr. Macleod for defendant now proposes to put into the box a witness named Kho Pay whose name does not appear in the list of witnesses filed by defendant's advocate, dated August 14th, 1866, and explains he is substituted for the 3rd witness, Moungh Youk, who is absent.

Mr. Law makes no objection to the substitution, but immediately after he has done so, the 3rd plaintiff, John McCall, appears in court, and objects to the witness being called on the ground that he is a relation of Shoay Gan, the 2nd defendant, who has secreted himself throughout; and also he has, to the best of their (the plaintiffs' belief) been in Court during the evidence of other witnesses.

Mr. Macleod replies. Subpœnas are not compulsory (quotes section 149 of Act VIII of 1859.) The relationship of Shoay Gan is no disqualification.

The tendered witness is examined.

I have been in attendance every day during the hearing of the Mhinloongyee cases outside the Court, and not allowed to come in. I swear I have not heard the evidence of any of the other witnesses given in the box.

Witness admitted.

2. KO PAY, sworn—

I have now looked at S. A. I have seen that document before. I first saw it in B. Era 1220, English (1858). I first saw it in Zim-may, when I saw it handed to Shoay Gan by Chow Rajapoot. The seals upon it were then there. I have been to Bangkok. I went there for a case which I had against the Zim-may Chief. I don't know whether I gained or lost it.

*Cross examined*—I did sign S. A. as a witness. I cannot read Shan. I know a little Shan. I did not see Chow Rajapoot sign S. A. I do not know who wrote it. It was folded when hand on and pasted up. I know Moungh Youk. The last time I saw him was in the forests 2 years ago. I saw him in Maulmain about 15 days ago. I have worked in Mhinloongyee forests. I was not in partnership with Shoay Gan.

Question proposed—

Do you remember a case which Mr. Lenaine had against you and Shoay Gan? (After much difficulty). I remember that case.

Mr. Macleod objects to the witness being interrogated in examination—upon any case which he has had in Court, for if it is done to test his credibility as a witness, the production of the witness on the examination, and the witness being examined then, it is no way relevant to any issue in this cause: and under any circumstances will only raise an irrelevant enquiry. Objections over-ruled and question allowed. It is a part of every day's regular practice to ask a witness what he may have said or done in other cases by way of drawing inconsistency with his present sayings or doings.

I have now looked at M. M. M. filed in that Suit No. 1 of 2nd Qr. of 1860. I do not think the signature to that document is my signature. I will swear it is not my signature. Before S. A. was given to Shoay Gan, Lenaine was in Zimmay. I and Shoay Gan went up with it. I saw a palm leaf document also given. That was after the paper document was put in a case. I afterwards saw that document opened. No, I was not present. I saw it in Maulmain 4 or 5 months after, in Shoay Gan's possession. I have had 5 Rs. only once from Mr. Snadden for attendance 4 days ago.

Read over in Burmese.

W. H. CLARKE.

3. JAMES BARKER, sworn—

I am Deputy Conservator of the Salween Division of the forests in British Burmah. The first period in the year for girdling teak timber is March and April. The last times are September, October and November. The departmental time between girdling and felling, enforced by us, is 3 years. Timber girdled and felled at once would not float.

F. N. BURN, after some delay, appears. It is objected to by Mr. Law on the ground first that he has already been examined in the case. 2. That he does not appear in defendant's list of witnesses. 3. That he has been in Court during a great part of the trial. 4. That he has been in constant communication with the opposite party.

MR. MACLEOD—1. He was not examined in chief as defendant's witness—only cross-examined. 2. Not necessary that a list of witnesses should be filed, or any witnesses named for whom subpoenas is not required.

3. That he was not, to Mr. Macleod's belief, present during the examination of any witness. 4. Supposing he had, it would not disqualify him from telling the truth.

FRED BURN, sworn—

I have not been in the Court during the trial of the Mhyneeloongyee Cases and the examination of witnesses. I did not appear in court till May 19th. I was examined on that day. The next witness examined after me was Maling. I was in court when Maling gave his evidence. I was in court during Colonel Brown's examination (production of documents) May 22nd. I am not sure, I was present on May 23rd, when Colonel Brown continued his evidence. I was not in court the next day. I have not been in court since then till now during the examination of witnesses. I was not in court when Dr. Slyn was examined, was to-day when Ko Pay was being examined. I see Mr. Snadden 5 or 6 days in the week.

EXAMINATION ALLOWED.

4. FREDERIC BURN, sworn—

I was in connection with the Mhyneeloongyee forests, in consequence of those operations the timber now in Mr. Snadden's possession was obtained. It was marked below the Kyouk Paik. I dragged all I could first near the creek, I may have left a few logs. I was not interfered with by any one. I had 30 or 40 men with me. I had not more arms than was necessary for our protection. We were in the jungles for 11 months from first to last. No official ever interfered with us, nor Burmese from the English side. I held possession of the timber during the 11 months, which timber Snadden has received. I met the Governor often in Mhyneeloongyee. He assisted me with fruits, meat and elephants (4) to proceed to Zimmay. I resided outside the town in a house built for me by the Governor. I have been to Bangkok. Z is the signature of Mr. Alabaster. I have seen him sign repeatedly. The 2 blue seals are the seals of the Bangkok Consulate, where I have been frequently. Alabaster is the interpreter. I have now looked at document Z, and recognize the signature appended near the seals thereto as the signature of Sir Robert Schomburgh, who was Consul then. I remember the advertisement published June 4th, 1864, in "*Maulmain Advertiser*," signed by Moung Shoay Gan, a similar advertisement in "*Observer*," of June 14. I saw no person whatever. I first went up in December 1865. I launched as much timber as I could.

*Cross examined.*—The advertisements were sent in by my brother, the late defendant. Snadden was at that time opposed to our interests. I was at Bangkok in March or April 1863. I did not see these documents signed or sealed by Schomburgh. I can swear to the seal as I have often seen it used. I have seen a Fonseca who is interpreter. I never spoke to him. He was my brother's interpreter. I have had complaints made to me of my party being fired at. Some of my men have been reported wounded. I have taken possession of elephants. I do not know whom they belonged to. I know not

of any firing into my party. None was reported to me, nor any firing by my party. No authority or other person ever ordered me to restore the elephants. The practise in reference to timber is to drag the timber to the banks, then mark it, and then float it. I marked the whole of the timber. The whole of the timber I dragged I marked before I floated it into the river. I saw the marks put on from 2 to 5,000 logs before I saw it put in the river. The balance, which I did not see, would be about 5,000. (Part of his evidence on page 33 read to him.) The object of marking at Kyodan was to prevent it going down unmarked. Some of the timber was in the water when I arrived in the jungle, that was not put in by me; as to other parties I don't know. My 11 months were from January till May, when I came down leaving my men in possession, went back and resumed possession till January 1866. After marking the logs, I finished putting them into the river on January 5th, 1866. I made the rope station in March or April 1865. The 3,000 logs were below Kyouk Paik. The letter now shown to me, dated Mhneloongyee, 21st November, 1865, is signed by me (W. T. L. 13' court No. N N N—note read.) I still repeat, I used no force whatever, and no force was used to me. (Shown No. 11, dated O. and N. 7th 1865, court mark O. O. O.) That letter was written by me. (Read over.) The Chief of Zimmay is the Shoay Nan Shin. Produces (P P P No. 6.) That is a letter of mine, except certain words on the back. I wrote that letter after consultation with my brother, who was then sick. (Shown note R R R.) That note is written by me (it is in pencil, note read.) The "row that will be" referred to a possible row at Meebong on the Salween, on rafting the logs. As to elephants, that I can only give hearsay evidence. I wrote that about F in consequence of a letter which Maling wrote to me saying that Mhneloongyee logs so marked had been found on the Salween. I did not believe the statement. I have not got that letter now. I may have it in my box. I can't say. We had Moun Youk's elephants to carry our things, as he had taken ours to carry his. He was one of our men. I last saw Moun Youk a week ago. I believe he is the same man who is subpoenaed here. I have now looked at tripple S. S. S. (4 of W. T. L.) That is written by me. By a Kyodan, I mean one rope station. I have often heard of other Kyodans besides the Kyodan in British territory. Moun Shoay Gan made one on the the Mhneloongyee river about 5 years ago. I have heard they are made in Karennee. I know of the British one, on the Salween river, which is kept up by the merchants. By reinforcements, I mean additional new coolies or others. I now look at T. T. T., July 28th, 1865. (W. T. L. 6) written by me. (Read.) Mr. Johnstone referred to in that letter was not C. O. Johnstone, but Johnson the Inspector. That letter was written when my brother was alive. I never for a moment doubted that he corresponded with Snadden. I saw Shoay Gan last on Sunday or Monday at my own house. I think I saw him on Sunday at Snadden's house in presence of Mr. Macleod, C. O. Johnstone, Mr. Clare, Mr. Charles Snadden, but *not* Moun Youk. I have never attended meetings, but I have dined at Snadden's very often with Mr. Macleod and Johnstone during the last month. I have not received a single anna from Snadden since I last gave evidence directly, or

indirectly, nor from any party connected with this case. Johnstone has not to receive a single anna on account of Mhyneloongyee either from my brother's estate or from me. There was no money what ever due to Johnstone since he settled more than a year ago either by me or my brother's estate. There was a promissory note for Rs. 600 which was paid 8 months ago previous to my brother's death.

It being 4 p. m., the court adjourns. Re-examination to commence tomorrow.

W. H. CLARKE.

*August 23rd, 1866.*

Case resumed.

FRED. BURN, re-examined—

Fonseca was an officer of the Kromelo, but also acted as interpreter my brother Johnstone's interests in these matter was entirely settled I produce his letter (U U U) (Objected to on the ground that it ought to have been produced in the examination in chief Ruled admissable It arises immediately out of the examination) (Read) The docket on the back is in the late 1st defendant's handwriting I was on January 25th, 1866, in the jungle Moug Phoo was a Thit giong That note I produce from my brother's box The sail ours I spoke of were employed at Kyodan in British territory, but had been with me in the forests for 10 days When I wrote "I would shoot any man who endeavoured to carry away timber," I intended thereby to express that I would shoot any man who attempted to take out of my possession any timber in the Mhyneloongyee forests which I considered to be my brother's I had not in my possession then any timber other than what had come into my possession peaceably. I heard the Touk was a messenger of the Chief of Zimmay. It was the Binya who built the house for me. The person I spoke of was wounded after I left in January 1866. There was no attack before that on me The C. O. J. referred to in the pencil note R. R. R. is C. O. Johnstone, whose men were engaged in making over to my brother the property from Johnstone pursuance of arrangements. Moug Youk was a man working on our side Yain hyne is on the Salween river 80 miles from Maulmain in British jurisdiction.

Read.

W. H. CLARKE.

##### 5. CHARLES OCTAVIUS JOHNSTONE, sworn—

I have now looked at U. U. U. That note is in my handwriting. It was written on the date it bears, January 24th, 1865. I do not recollect if at that date any cases were pending in court affecting the Mhyneloongyee timber. The two notes spoken in this letter were part of the consideration which I was to receive for transferring over the forest. I have been in Maulmain. I came first in 1853, October I think. I have been engaged in forest operations since 1858 and 1859. I know the Mhyneloongyee forests, and have been thither. I was

first there in July 1863. I went thither with the intention of working them. I had permits for those forests. I got my permits from Snadden. Lenaine had been in those forests before me. Snadden had taken over Lenaine's interest, and those interests he transferred to me. Lenaine got from Shoay Gan and Chief of Zimmay. Captain Burn and Shoay Gan endeavoured to oust me, on which I proceeded first to Zimmay and afterwards to Bangkok. I accompanied the Chief of Zimmay to Bangkok, I mean Shoay Nan Shin. I accompanied him all the way for my own protection. I went to Bangkok to watch my interests. The Chief of Zimmay is subject to Bangkok government. He appeared before the Royal Court of Siam in a suit between Shoay Gan and Captain Burn against Chief of Zimmay for Mhyneloongyee forest and timber. The Chief of Zimmay appeared as defendant in that suit. I acted for him before the court, and Captain Burn appeared on the opposite side. Chow Rajapoot accompanied us to Bangkok, and was examined before the court. I have seen S A before at Bangkok. It was presented to the High Court as Chow Rajapoot's grant. So was I as representing the Chief of Zimmay. Chow Rajapoot was examined on the document, and admitted it was his. The Krom Luang Wongsa presided in that court. I think it was in the month of March. S A was produced by Captain Burn and Shoay Gan. I have now looked at Z, and the signature and seal. It is the signature and seal of officer of the Kromlo. At that time Knox was the sworn translator of the court. He was succeeded by Alibaster. I identify the signature of Sir R. Schomburgh. I have received letters from him, but never saw him write. I believe the seal appended is his seal, but I have not had much experience in the seal.

The counsel for plaintiffs now rises and informs the court that the plaintiffs are prepared to admit that all the documents produced purporting to bear the seal and signature of Sir R. Schomburgh are really the seal and signature of the said authority.

I do not know whose signature that is in native writing between the words "approved by" and the seal. The Chief of Zimmay was present when the document S A was produced. We were in Bangkok from November to April. I took over the grant from Snadden in July 1863. I took possession then. There were no other interests but mine, in the forests. Some Burmese were cutting, but not with my sanction. No interest but Shoay Gan's, Burn's, the Chief and my own were before the court. The Chief left Bangkok in the early part of January, but I do not know when he got back. It would take nearly 3 months, say 2½ months, to get back from Bangkok to Zimmay. The end of the case was a compromise between Burn and Chief.

Mr. Macleod now proposes to question the witness in reference to the document  $\frac{M}{Z} \frac{N}{F}$  and W, the originals of which have been sent to Rangoon with the interrogatories. The court on Mr. Macleod's application reserves to him the right to examine the witness on these documents tomorrow, when the steamer Awa will bring them back to Maulmain.

I have now read Z, and read over. That document represents the terms of the compromise of which I spoke between the Chief and Shoay Gan. That was the final act before that court. I tried all I could to get that compromise set aside. I was not present when the compromise was entered into. The Chief admitted to me as his agent that he had made the compromise. The effect of this was to prevent my going back to the Mhineloongyee forests. I had an interview with the King and Kromelo. The latter gave me a document, but I did not go back to the forest in consequence. Eventually I returned to Snadden my interest in the forest. At that time I owed Snadden about a lac of rupees. He gave me a release. I made over the entirety of my interests to Snadden. At Burn's death, the interest I had belonged to Burn and Shoay Gan so far as I was concerned. The 2 promissory notes for Rs. 15,000 were Burn's part of consideration to me for going out of the concern, in addition to some cash. I have no interest in these suits now pending in court. I was in the Mhineloongyee forests about a fortnight. I have only been there since the Regent of the N E province of Siam was Kromelo Wongsa, and after him Phya Phoother Rappee. Official documents in Siam are signed by the King's minister. The black book now produced—the treaty—is my book, was given to me by the Kromelo. The Mhineloongyee forests are situated in the Kingdom of Siam. It takes 5 days from Mhineloongyee to Zimmay for footmen—elephants 8 to 10.

*Cross examined.*—There was no court decision, only a compromise in the case between Shoay Gan and Burn v. Zimmay. The court is called Sinnabodi court. The document I got from the Kromelo Wongsa, there is a copy of it filed in court. N N is that copy. The original was also filed in court. I got a grant from the Chief of Zimmay in my own name of the Mhineloongyee forests for conducting his cases for a term of between 5 and 6 years, commencing 22nd of July, 1863. There were 2 permits. They were afterwards withdrawn and cancelled. They included the whole of the Mhineloongyee forests. I transferred to Snadden all my rights including the cancelled grants. There was no endorsement on the cancelled grants to show they were cancelled, but I explained to Captain Burn. Captain Burn was not a party to release. I was under the impression at the time that Captain Burn used undue influence to obtain the compromise, but I am not prepared to affirm that he has. I have so represented that the compromise was obtained by fraud. There were notes aggregating 10,000 dollars in favor of Kromelo which were forwarded as was supposed to meet expenses, but which I subsequently ascertained were never cashed, or converted into money. They were drawn by Shoay Gan, guaranteed by Burn. The Kromelo is the man whose seal is attached to the compromise. The notes were given to me as waste paper. I was under the impression at that time they were intended as a baulk. I believe the notes are now among my papers. I withdrew the complaint against Burn some time after. Laine's grant was made over to me by Snadden. It was made over to me when I bought the timber from Snadden, and I was referred to the Zimmay court to get Shoay Gan's grant. When I went to Zimmay I expected to receive Shoay Gan's grant in Zimmay from the court. I then found it was not in the court. I

subsequently found it in Bangkok in Captain Burn's possession. I was speaking of S. A. During my absence, Mr. Snadden received a leaf copy of that grant, and a transfer document with it, which he failed to send to me owing to risk of carriage. The leaf copy was not transferred to me. I never saw it. When that document S. A. was produced I denied that it was the genuine document as I was pleading against him. I do not claim those notes from Burn's estate or against Snadden. The original of N N was attached to a sealed copy of the proceedings of the Sennabodi. I have most of those sealed proceedings now. The papers connected with Colonel Phayre's petition were returned to me. I did not produce them when called in chief as I had not them with me that day. I have no objection to produce such papers as I have tomorrow. I remember Mr. Law coming here about the end of 1859 I believe, and did some business for me as a lawyer. Mr. Law has never put foot in my house, but has asked me to go to his.—I did not, I am not aware that I ever made a specific offer to Mr. Law of my evidence if he would make it worth my while. I might have done so in joke. I dare say Mr. Clare was present. I do not remember the amount at which I valued my services or any amount at all. I may have said I could make it go either way, that I could decide it in a few minutes. I subsequently went to see McCall, the 4th plaintiff, at Mr. Clare's request. In course of conversation with McCall, I suggested to him to discount the 2 bills of Moung Pou Rs. 15,000. I think I did not show him the bill. I proposed to stand  $\frac{1}{2}$  rd reduction. I explained to him the nature of the bills. Mr. McCall did not entertain my offer. I called on McCall again either once or twice. I did not ask Clare to tout for me in the matter. I did not send Mr. Clare to Aga Syed to offer my evidence for money, but Mr. Clare volunteered. It was proposed then I should get Rs. 10,000. This was the same date as my offer to McCall. I was to give valuable information for the Rs. 10,000. I have no information to offer now. I took over the forests bonafide from Snadden for 1,70,000 Rs. I know Mr. Hertz. He had a suit against me for wages to which I pleaded money due, but pauperism. I had purchased the forest immediately before. That was entirely on credit. The Mhyneloongyee property was at that date transferred to me under a lien to be paid for by instalments. I recollect the names of some of the Burmese whom I found cutting the forests when I went up—Toon Zan, Moung Key, Kyan Tea, Moung Mowah, and others. Z is signed by Kromelo Woongza, and Sir Robert Schomburgh. It is not signed by Burn, Shoay Gan, or the Chief of Zinnmay. The 10,000 dollar note was made over to me to make any use I chose of it. They were given to me by the Secretary. I do not know by whose orders. It was not on my representation that the note had been given as a bribe. I have now looked at W W W. I wrote that note in consequence of overtures made to me by McCall and by others. The result was that McCall called on me after that letter and tried to pump me but I declined to give information. I gave Fonseca 2 promissory notes. They were protested for non-payment. This was not a joke about the 10,000 Rs from J. F. There was an object in this. On May 11th (date of note to McCall) I was not on speaking terms with Snadden. I made friends with Snadden in July. I may have told you (Mr. Law) that if the opposite side got



the case I should get Rs. 15,000. I may have said I would rather take Rs. 10,000 from plaintiff's side than 15,000 from defendant's, as I was not friendly with Dick Snadden.

*Re-examined*—All these negotiations were opened by Mr. Thomas Clare, a senior partner of Aga Syed, one of the plaintiffs in one of the suits. I swear solemnly that McCall called on me a day or two after the 11th of May. I believe it was on a Sunday. His call was on the subject of my note. He was with me nearly an hour. These negotiations were going on several months. Nothing since the note.

*August 24th, 1866.*

Proceedings resumed.

Advocates for parties present.

6. PETER DE PENHA—

I am clerk of the Commissioner of Tenasserim. I produce 3 documents, L. B. and Y.

Which are read by the court, and marked by the Registrar:

The interrogatories, cross-interrogatories, and re-interrogatories addressed to the Chief Commissioner and Mr. Consul Fowle (having been returned from Rangoon) with replies thereto, are all and each of them read out by the Registrar of the court. Certain documents forwarded with the replies are not read, as the court considers that their contents, even if having reference to the subject of the Mhyneloongyee timber, would not be evidence on the issues which the court has to try.

7. Evidence of Colonel A. P. PHAYRE, C. B., Chief Commissioner of British Burmah and Agent to the Governor General of India, and sole judge of the Chief Court of British Burmah, by special commission—

1st. State your name, rank, appointment, and how long you have held the same. *A.* Arthur Purves Phayre, Colonel, Chief Commissioner of British Burmah, since January 1862.

2nd. Are you the representative of the British Government in Burmah? *A.* I am.

3rd. Have you had any official intercourse with the Court of Siam? *A.* I have had.

4th. What is the usual mode in which acts of state from Siam are executed? Are they signed or sealed by the ministers of the King under his own seal and sign manual? *A.* All that I have seen purported to be signed and sealed by the King's ministers, and not by the King himself.

5th. Are the Mhineloongyee forests in the kingdom and under the sovereignty of His Majesty of Siam, or not? *A.* I have always understood that they are.

6th. Look at these documents marked W and  $\frac{MM}{ZZ}$ , and state if these would, or would not, be received by you in your official capacity as acts of state of the King of Siam in copy? *A.* The document marked W would be. The document  $\frac{MM}{ZZ}$  would also be received as the copy of a letter addressed to the gentleman appointed by the King of Siam as his Consul at Rangoon.

7th. Are they executed in the form usual for such documents? *A.* They appear to be so.

8th. Are you officially informed that Sir Robert Schomburgk when accredited as H. B. M. Consul to the King of Siam hoisted the Consular flag in the Laos states? *A.* I am not officially informed of that fact.

9th. Is it usual, and are you aware of any single instance of documents such as these W and  $\frac{MM}{ZZ}$  exhibits having been issued by any King of Siam, or Ava, or by any other oriental potentate under the sign manual or the King's own seal? *A.* I am not aware of any instance in which such documents have been issued by any King of Siam or Ava under the sign manual.

10th. Who is the Consul accredited to you as Governor General's Agent in Burmah from H. M. the King of Siam, and is his appointment recognized by the Government of India? *A.* Mr. E. Fowle has been appointed by H. M. the King of Siam, and I receive communications from him as Agent and Consul for the King of Siam. His appointment has not been recognized by the Government of India. ¶ Since writing the answer to question 10 I find that Mr. E. Fowle was duly gazetted in the Calcutta Gazette of November 7th, 1863. So that he is formally Consul for Siam.

*Cross Interrogatories.*—1st. If you shall reply in the affirmative to to Question 3rd put by defendant's advocate, state in what year and month your first official intercourse with the Court of Siam took place? Whether you were first addressed by the Court of Siam, or whether you first addressed the Court, and whether you corresponded directly with the King of Siam, or with one of his ministers, and if with the latter, name him and if you have had any correspondence with the Court of Siam relative to the cases now pending in Court known as the Mhineloongyee cases, or relative to the power of the Chief of Zimmay over the Mhineloongyee forests, you are requested to return with this commission copies of all such correspondence duly authenticated. *A.* As well as I recollect I think the first letter I received was dated the 1st July, 1865 from the Prime Minister of Siam for Civil affairs, but as I am required to give these replies at once to save the steamer I possibly may have had an earlier letter. I was first addressed by the King of Siam himself in a complimentary letter, and my letters with his Majesty have never been considered official, and have never been placed on record in my office. I annex original letter of the 1st July, 1865, from the Prime Minister, which I request may be returned to me.

2nd. If you say the Mhineloongyee forests are under the sover-

eignty of the King of Siam, state where they are situated, and if you know they are within the jurisdiction of the Chief of Zimmay styled the Zimmay Mengyee or Shoay Nan Shin. *A.* The Mhineloongyee river, as is well known, flows from the north into the Thoungyeen river. The Mhineloongyee forests lie on the banks of the several tributaries of that stream. I have always understood that the territory of Mhineloongyee was generally subordinate to the Chief of Zimmay.

3rd. If you shall reply in the affirmative to Question No. 6 state whether in deciding a case judicially, you would accept these documents as legal evidence without being proved as other documents are, and if so, you grounds for so doing. State also if you have ever seen these documents before, and if so who presented them to you and what you did with them. *A.* I would, in deciding a case judicially, accept these documents for what they purport to be. Documents W I would accept as they are unless reason was shewn for doubting them, but prima facie I see no reason for doing so. For the rest I think I should require Mr. Fowle to produce and swear to the originals. I think I have seen before copies of documents W, but cannot now recollect who shewed them to me. Lately I received copies of them from Government. ¶ Having since found that Mr. E. Fowle has been gazetted by the Government of India as Consul for Siam, I should receive his consular seal and signature to a document as prima facie correct.

4th. If you shall answer question No. 7 in the affirmative, state your means of knowledge of so doing—how many documents of a similar nature you have seen so signed. *A.* A general knowledge of the method of preparing documents by the Burmese and occasionally by Siamese, but a document of this precise nature is very rare indeed. It appears to have been given under circumstances which very seldom arise.

5th. Do you know a person named C. O. Johnstone who formerly claimed some interest in the forest or timber of Mhineloongyee? *A.* I know Mr. Johnstone.

6th. Did he ever make any complaint to you, or to the Government through you, regarding the conduct of the late R. C. Burn, Shoay Gan, and the late Sir Robert Schomburgh, or all, or either of them? If so, state the nature of the complaint and what proceedings were held thereon, and return a copy of the whole of the proceedings with this commission. *A.* The complaint was that the British consul at Bangkok had interfered in a manner adverse to his (Mr. Johnstone's) interest, and favoring unduly the interests of Captain Burn and Moung Shoay Gan. The papers and enclosures, which were very numerous, were for the most part forwarded to Government for orders, and all were afterwards returned to Mr. Johnstone who withdrew his complaint.

7th. Did you ever see a promissory note for or engagement to pay ten thousand dollars made by the late R. C. Burn in favor of any Siamese official, and was it not represented to you by Mr. Johnstone that the said promissory note or engagement was given as a bribe? *A.* I do not remember this. The papers were very voluminous, and

were forwarded by me without delay to save the mail, so that I did not peruse all.

8th. If you shall answer in the affirmative, state what became of that promissory note or engagement to pay ten thousand dollars. *A.* As above.

9th. To your knowledge was the late R. C. Burn called upon by the Home government to explain under what circumstances he made the said promissory note? I think it was the Indian government that required an explanation on this point.

10th. Do you recollect issuing a circular or minute dated the 10th. February 1862 to all officers subordinate to you in which the Commissioner of Tenasserim is declared to be the proper channel of communication with the various Shan states? *A.* I do.

11th. Is Zimmay a Shan state with which the Commissioner should communicate under that order? *A.* It is.

12th. Are you or are you not aware that ever since the British rule in Tenasserim all disputes regarding Mhyneloongyee and other timber coming into the Thoungyeen have been tried and decided by the Maulmain Courts? *A.* Disputes regarding timber which has arrived in British territory have been so decided.

13th. Can you mention any case of such a nature having been referred for trial by the Maulmain Courts to Bangkok? *A.* I cannot.

14th. Did you or your superiors while you were in the Tenasserim Division ever correspond officially with the Chief of Zimmay? *A.* Constantly.

*Re-interrogatories*—1st. If you have had any correspondence, be so good as to state which part was official and which merely complimentary and private, and state if any official correspondence was signed by the King, or by his Minister or Ministers. *A.* I send an official letter from the Prime minister in original. Private letters alone were signed by the King.

2nd. In regard to your answer to cross interrogatory No. 3, state if you would or would not be quite satisfied in proof of the official seal of the Minister or Ministers of the King of Siam to the documents in regard to matters, officers, their authority and power especially when such official seals were accepted and authenticated by the Consul for Great Britain to the King of Siam. *A.* I should be quite satisfied. The authentication by the Consul would be an additional guarantee of genuineness.

3rd. In respect to the 10th cross interrogatory, are not your subordinate officers unqualifiedly now forbidden to communicate with foreign chiefs except through you as agent to the Governor General of India? *A.* Subordinate officers are forbidden to write to independent chiefs regarding Judicial cases pending, but not regarding ordinary affairs.

4th. Have not the local courts here scrupulously avoided raising any issue or trying such issues as would involve a question of the relative powers of foreign officials under the King of Siam, and have you, not on all official occasions recognized the King of Siam as supreme, and his acts to be of full force throughout his Kingdom when communicated through his ministers under their seals of office, authentica-

ted by the consul for H. B. Majesty ? *A.* The object of the Courts here has generally been to ascertain what foreign official possessed adequate authority for any given act which formed a matter for enquiry before the Court. I have for some years past recognized the acts of the King of Siam as supreme under the circumstances stated.

5th. In respect to cross interrogatory No. 14, if you did so correspond, was it in any recognition of the sovereign independence of Zimmay from Siam, and did you ever treat or consider the Chief of Zimmay other than a subordinate of the King of Siam ? *A.* The Chief of Zimmay has always been considered as tributary to the King of Siam. He has never been considered as independent, although it is understood that the action of the King of Siam has been more direct of late over the affairs of Zimmay, than it was in the years 1847 and 1848, when I was Deputy Commissioner at Maulmain.

8. Evidence of EDWARD FOWLE Esq., Consul for Siam, duly accredited to the Chief Commissioner of British Burmah, and Agent to the Governor General of India, by commission—

1st. State your name, occupation and official appointment, if any under the King of Siam. *A.* Edward Fowle, merchant, and recognized gazetted Consul to his Majesty the King of Siam by Her Majesty's Government.

2nd. How long have you been connected with the Court of Siam ? *A.* Nearly years four.

3rd. Look at these documents marked W. and  $\frac{M}{E} \frac{M}{E}$ . Are they or are they not acts of state of the King of Siam in copy and produce the original ? *A.* They are acts of state of the King of Siam in copy, and I produce the original, and hand it over to the Registrar.

4th. Are you officially aware or under orders from the King who is the supreme ruler or regent of the North East portion of the Kingdom of Siam ? *A.* I have been officially informed by the King of Siam also by the Prime Minister of Siam under orders from the King, that his excellency Chow Phya Budharabhay is Prime Minister for civil affairs and president of the Northern provinces of Siam and adjacent tributary states of Laos.

5th. Look at the seal on document W and  $\frac{M}{E} \frac{M}{E}$ . State if each is that of the regent or supreme authority of that part of the kingdom of Siam ? *A.* I have examined the seals, and declare them to be the seal of the rule of that part of Siam, namely that of his excellency the president of the Northern provinces of Siam and adjacent tributary states of Laos.

6th. Are the Mhyneloongyee forests in the Kingdom and under the sovereignty of the King of Siam, and in which part of the Kingdom are they situated ? *A.* The Mhyneloongyee forests are situated in the tributary Laos state of Zimmay, which state is under the sovereignty of the King of Siam, and has been so uninterruptedly for eighty-four years.

## Case for the Defence closed.

The court calls upon the defendant's advocate to address the court.

Mr. Macleod addresses the court, and closes his address at 2 p. m.

Mr. Law leaves his case case to the "dumb advocacy" of the record.

Decree will be given at 6 p. m.

W. H. CLARKE,  
Recorder.

## J U D G M E N T.

THE exhibits in this Case having been perused, the witnesses examined, and the parties heard by their respective Pleaders, it now becomes the duty of the Court under the terms of the 183rd Section of Act VIII of 1859 to pronounce its Judgment. And *li-mine* the Court observes that it entirely agrees with the observation made by Defendant's Advocate in his address to the Court that these Mhineloongyee Cases, after all, present no feature of peculiar difficulty, and that their importance arises more from the magnitude of the interests at stake, than from any legal difficulty in arriving at a decision. Much of the difficulty which did exist has been removed by two causes. First, by the ruling of the High Court, dated the 23rd June 1866, in a case of Saya Loo, Plaintiff, against Nga Paw Loo, Defendant, referred for opinion by the late Recorder, Mr. Coryton. This ruling has removed all question as to jurisdiction, and as to the effect of force in taking possession of personalty from another in a Foreign State, and secondly, by the withdrawal of the names of Captain Burn and Shoay Gan from the record, leaving thereon the name of Snadden only. These two causes greatly reduce the number of the issues on which this Court has to decide. The first three issues no longer demand decision. The 13th issue is in a similar position, and in point of fact the real questions which the Court has to decide are now reduced to two. Firstly—who, Plaintiff or Defendant, have the prior title to this Timber by acquest? and, secondly, has the Timber been actually or constructively removed from the possession

of the first acquestor, and if so, who is liable for such removal ?

The Court at once intimates its opinion that it does not, in the judgment of the present Judge, matter at all to the case whether the Chief of Zimmay is or is not an independent Chief or tributary to the King of Siam, that is to say, it does not matter as between the present parties. Such a question would doubtless be most material in a suit between either of these parties and the Chief of Zimmay. *There* the question would properly arise. So again in a suit in the native Courts of Siam which either Plaintiff or Defendant might bring against their Siamese vendors under the terms of the Treaty, when falling back upon such vendor in loss of bargain through bad title, it would be material to ascertain whether these forests vest in the Chief of Zimmay or in the King of Siam as Lord Paramount ; but, in this Case, where the Plaintiff's muniments of title purport to come from the Prince of Zimmay, and Defendant's muniments of title, (Shoay Gan's Grant) from Rajahpoot, a petty Chieftain of Mhinelongyee, in the State of Zimmay, subsidized by a subsequent grant in favor of Lenaine from the same Chief of Zimmay, the Court apprehends that its duty is almost limited to saying which of the bargains was prior in point of time, and which of the bargains stood and stands ratified by subsequent transactions.

To suppose a parallel case : if two merchants, dealing in ivory, were to proceed up the rivers of the West African coast, and there speculate in ivory with half savage tribes of the interior, and both at different dates make purchases, parceled their ivories and sent them down to Sierra-Leone for export to Liverpool, and on the way a dispute arose between the two merchants as to the parcels of ivory : will it be pretended that any court in the world would, in an action between the two merchants, enter into the question as to what territory the elephants belong to that produced the ivory ? Would it not be held that as between those parties enquiry should commence from the acquist of the property and not from facts anterior thereto with which civilized courts have no concern ?

This appears, *mututis mutandis*, to be precisely the case with the Mhineloongyee timber, and agreeably to this opinion the court now proceeds to examine the evidence on both sides, to ascertain in whom the better title, by right of acquist, exists in this case.

The defendant's advocate has this day laid great stress on the fact that plaintiff's document, A., bears date in 1864, and has argued therefrom that as teak timber takes three years to prepare for the market, that therefore none of the timber cut under that license can yet have come down, and therefore also that none of the timber now lying in Snadden's yard, which plaintiff's witnesses have sworn that they cut in 1225 could have been the timber cut under the permit A. But on carefully examining the exhibits A and B which bear even date, it appears to the court evident that these documents were only confirmatory of antecedent workings in the forest, by *Eik-Pran*, Moug Khine and others of plaintiff's party, and acknowledgments of tribute paid in respect thereof; for instance, document B is an authority to mark, and it has transpired in evidence that marking is not done till the timber is in or near the water—further Nga Byke swears that he saw the timber at Mhineloongyee marked with plaintiff's mark, and at that time bearing no other mark, which timber he subsequently saw in defendant's htay still bearing plaintiff's double sickle, but also M and Nga Hai. On cross examination he stated this timber was cut in 1225—a year before the date of either A or B—he further says that Moug Khine, the plaintiff, girdled timber in 1225 and that Shoay Gan was not then in charge of the forests, and he ends by saying “the timber I saw in Snadden's yard was girdled by *Eik-Pran* and felled by Moug Khine—I saw his coolies cutting it down.”

The next witness examined was the plaintiff himself, who swears that the timber was cut by his coolies, the trees having been previously girdled for killing by *Eik-Pran*, his partner, that he marked it with his own mark, the double sickle, and that he has since seen that timber at Kadoe in the defendant's (Snadden's) yard with other marks beside his own.

On cross examination he says some of the timber was



cut before he got his grant, and in this he is borne out by the evidence of Eik-Pran, who says that Moungh Khine worked under a previous permit granted to him, Eik-Pran, and that the 609 logs were cut in 1225, or one year antecedent to the permit A; he further says, that Burn and Shoay Gan went to the forest after the timber was in the water and partially worked down, 8 or 9 months after, and he concludes by saying that he has lately seen, at Kadoe, in possession of Snadden, the timber of which he had been speaking, bearing an additional foreign mark.

The two next witnesses, Moungh Khee and Moungh Mhine, both speak to the timber having been cut for plaintiff in 1225, and marked with his mark.

Such is, the Court believes, a correct statement of the plaintiff's evidence of title by acquist. The next portion of plaintiff's evidence requiring remark from the Court is that of Dr. Slym, who deposes that so long ago as 1222 the double sickle was registered in the office as the hammermark of Tha Dway, whose Certificate the Plaintiff has or had in his possession, and the Nga Hai was first registered in August 1864 in the names of Burn and Shoay Gan, and M in January 1865 in the name of Snadden. The only further observations which the Court has to make upon Plaintiff's evidence, and specially upon that of Maling and Burn is, that it undoubtedly does show that force was used within the foreign state in taking and retaining possession of this timber on Defendant's behalf, or rather on behalf of Captain R. C. Burn.

We now pass on to the Defendant's title, and without losing sight of the principle that the Plaintiff must succeed by the strength of his own title, and not by the weakness of his adversary, yet, where a Defendant puts forth muniments of title, the Court is bound to examine those documents and see if they support his pretensions.

Defendant's documents consist of (S. A.) a letter from Chow Rajapoot of Zimmay to the local authorities of Maulmain, dated in 1221 (1859) empowering Shoay Gan to act as Overseer of the Mhineloongyee Forests within certain limits; they also rely upon the document Z which they term a compromise between Burn and Shoay Gan on the one side, and the Chief of Zimmay on the other,

but which on examination turns out to be nothing of the kind, not being signed by any of the supposed compromisers, but an order from the Chief of Zimmay declaring that he will not take the Forests from Shoay Gan, of which Forests he, Shoay Gan, had been appointed Overseer by Chow Rajapoot. The document W the Court has rejected for reasons which appear in the proceedings. The inconsistency however arises in this way that even supposing Shoay Gan had carried his authority as Overseer into effect, and continued so to do, it would be difficult to explain how Snadden, the present Defendant, could assert a claim thereunder, when he himself as lessee of the Chief of Zimmay acted in antagonism to the very Shoay Gan and Burn under whom he now claims. A reference to suit No 82 of 1864, sustains this view of the case.

Thus much on the documentary evidence, and we now proceed to the Defendant's witnesses. The first witness for the Defendant was the Defendant himself, and he certainly does give an honest and consistent account of his title and its transfer and re-transfer, but his evidence throws no light on that which the Court has ruled to be the leading point in this case,—the original acquet to the timber.

The second witness, Ko Oo Pay, was called to prove the document S A, and certainly swears that he saw it handed to Shoay Gan by Chow Rajahpoot in 1220, but he admits he did not sign it as a witness, nor see Chow Rajahpoot sign it—nor see who wrote it, nor knew its contents, as it was folded and pasted up when he saw it.

Mr Barker the next witness, gives professional evidence as to Forest custom, which the Appellate Court will probably consider for itself.

Then we have the evidence of Mr Burn, the great object of which appears on the defendant's part to have been to show that his brother's claims were recognized by the Chief of Mhinelooogyee, who built him (the witness) a house ; and on the Plaintiff's part to establish violence and force on the part of Mr. Burn and his fellow laborers.

The last witness is the man Johnstone ; the court can only say that an exhibition more disgusting, in a moral

point of view, was never presented to a court than in the evidence of this man, who admitted he had offered to sell his venal tongue to the highest bidder, and that his offer having been scouted by one party had been transferred to the other, with whom he was not on speaking terms till a month ago. The court cannot allow itself to waste time for a moment in considering evidence from so degraded a source.

Such then is the defendant's case; and weighing the whole of the facts together the court is bound to declare that it considers the plaintiffs entitled to Judgment, and it is decreed that the plaintiffs do recover from the defendant, *in specie*, 52 logs of teak timber, marked with a double sickle, (99) as claimed in the plaint, together with the costs of Suit.

This decree will, as the court considers, after careful consideration of Mr. Kennedy's order of the 3rd October 1865, govern also cases No. 161, 162, 163, 164, 165, 166, 170, 171, 175, 174, and 166.

With regard to the other cases, 12 in number, also generally known as Mhineoongyee cases, the court has not concluded whether they are embraced in the same category or not. At present that point is reserved, and it will be open to either party to move the court thereon at the next Sessions.

One further direction only the court has to give. If this court shall, through the Registrar, within one week, receive application for stay of execution, pending Appeal, and if security shall at the same time be given to the Registrar's satisfaction, to the amount of money value in each Suit as stated in the plaints, the court will then await intimation from the High Court of the admission of the Appeals until the first day of next Sessions. This will give ample time for communication with Calcutta: but if the steps now indicated be not taken, execution will issue in the usual course.

W. H. CLARKE,  
Recorder.

*Dated Maulmain, 25th August, 1866.*

## A D D E N D U M

TO THE JUDGMENT IN THE MHINLOONGYEE CASES DELIVERED AT 6 P. M. YESTERDAY EVENING.

The Recorder finds on re-perusing the Judgment which he delivered at a late hour last night, that in consequence of the urgency which existed for the decision of these cases before the close of the Sessions, he has casually omitted to dispose seriatim of the issues declared by Mr. Kennedy.

It is true that under the 185 section of the Act VIII of 1859, a finding or decision on each separate issue is not necessary where the finding upon any one of the issues is sufficient for the decision of the suit.

The court has already expressed its opinion, that in this case such finding on the last issue declared by Mr. Recorder Kennedy is sufficient, but, to prevent mistakes, and to put the appellate court in full possession of this court's finding upon all the facts of the case, the Recorder now proceeds to state seriatim his finding upon each of those issues in the case which remain after the striking out of the 1st, 2nd, 3rd, 8th and 13th issues, which have been rendered unnecessary by the ruling of the High Court, the decease of Burn and the withdrawal of Shoa Gan.

### *Issue No. 4.*

Whether the documents marked A and B were signed or executed by the Chief of Zimmay as alleged?	}	<i>Finding.</i> That they were so executed.
--	---	--

### *Issue No. 5.*

Whether the said Zim- may Chief had title or au- thority to make the grant in document marked A. and to recover the duty accor- ding to document marked D?	}	<i>Finding.</i> I think it prima facie appears that he had.
--	---	---

*Issue No. 6.*

Whether Chow Rajah-poot signed or executed document X appended to the Commission issued to Bangkok?	}	<p style="text-align: center;"><i>Finding.</i></p> <p>I have no doubt that he did, but it is not in proof.</p>
---	---	--

*Issue No. 7.*

Whether Chow Rajah-poot had title or authority to make the grant in said document X?	}	<p style="text-align: center;"><i>Finding.</i></p> <p>Of this there is no proof.</p>
--	---	--

*Issue No. 9.*

As an issue of law did any, and if any, what right, title, or interest vest in Shoay Gan under document X?	}	<p style="text-align: center;"><i>Finding.</i></p> <p>No, it merely created him overseer of the Mhineloonyec Forest, and did not confer authority superior to that held by MOUNG KHINE.</p>
--	---	---

*Issue No. 10.*

Was the right, title and interest of Shoay Gan revoked, annulled, or made void by Chow Rajapoot or any one acting under his authority at any time, and when?	}	<p style="text-align: center;"><i>Finding.</i></p> <p>No proof of this, though traces of the probability of the fact may be seen in the evidence?</p>
--	---	---

*Issue No. 11.*

By whom was the timber in question in this suit, cut?	}	<p style="text-align: center;"><i>Finding.</i></p> <p>By Plaintiff's party undoubtedly.</p>
---	---	---

*Issue No. 12.*

Was any of the timber in question in this suit originally girdled by Shoay Gan or any person acting on his behalf or by his authority, and subsequently cut by Plaintiffs?	}	<p style="text-align: center;"><i>Finding.</i></p> <p>There is no proof whatever that Shoay Gan girdled any timber, or that any person did so on his behalf; no such timber therefore could have been cut by MOUNG KHINE's party.</p>
--	---	---

*Issue No. 14.*

In whose possession has this timber been since it entered British Territory?	}	<i>Finding.</i> In that of Defendant Snadden.
--	---	---

SUPPLIMENTARY ISSUES DECLARED BY MR. KENNEDY.

*Issue No. 1.*

Was any of the timber in plaint mentioned in posses- sion of the defendant Snad- den at the time of com- mencement of the suit?	}	<i>Finding.</i> I consider that it was both virtually and con- structively.
---	---	--

*Issue No. 2.*

As an issue of law depen- dent on the findings on the former issues and frame of the plaint, are the Plain- tiffs entitled to a decree for the timber in the plaint mentioned, or any of it, al- so on all the issues on be- half of the Defendant Burn except the two first and the 13th?	}	<i>Finding.</i> Yes.
--	---	-------------------------

It will be observed that these several findings on the issues are in strict conformity with the views enunciated by this Court in the recorded judgment of Friday night, and concur with the principles on which the judgment rests that Plaintiff's possession by acquiescence, by permit, by payment of duty, by working, and by sufferance is superior to that set forth by Defendant on inconclusive documents accompanied by indications of violence and force in the super-marking and taking possession of this Timber.

The Registrar is requested to annex this note under my hand and seal to the original judgment, to cause a printed copy whereof to be placed on the file of each of

of to the Advocate for the Plaintiff and to the Advocate.  
for Defendant.

W. H. CLARKE,  
*Recorder.*

RECORDER'S COURT,  
Maulmain,  
Saturday Morning,  
25th August, 1866. }

THE PETITION OF RICHARD SNADDEN,  
DEFENDANT.

Respectfully Sheweth,

That an "addendum" in the above suit made several days after judgment was declared and signed in open Court, has been appended to the record with finding five days after copies of the Judgment and Decree had been granted to Defendant for appeal purposes, and in which copies no such findings or "addendum" are recorded

Petitioner humbly takes exception to this unusual course in his case, and solemnly protests against such being placed on the record, the same not being sanctioned by Law or by any procedure in force

Petitioner therefore prays that the same may be expunged from the record.

And as in duty bound,  
Your petitioner will ever pray

RICH SNADDEN,  
*Defendant*

Maulmain, 10th September, 1866.





# EXHIBITS.

---

## A 1.

BRITISH CONSULATE,

*Bangkok, May 28th, 1864.*

SIR,—I have the honor to enclose, for your information, copy of a despatch from myself to Earl Russell, reporting my correspondence with the Siamese authorities; and the proceedings in the Siamese Court in the matter of Moung Shoay Gan, a Burmese subject of Her Majesty, against the Chief of Xiengmai, ending by a compromise by which the forests on the Mhineloongyee creek are returned to Moung Shoay Gan, on the terms he held them before. This despatch, containing a full narrative of the case, renders it unnecessary for me to give any further account of it; but I cannot send these papers to you without calling your attention to the fact that, to the conduct of A. Lenaine, the trouble is mainly due. The Xiengmai seems to have become but too readily the dupe of this man, who, whilst, on the one hand, he was instigating them to rob his fellow subjects, in his behalf (by selling him this timber) was, on the other, cheating the Chief out of the duties on the timber. The proceedings in the Siamese Courts having revealed these rogueries, the Chief of Xiengmai at the same time that he compromised his case with Moung Shoay Gan, addressed me a letter, of which I enclose a certified translated copy, leaving it to your judgment to decide what steps should be taken on it.

I should state in reference to one portion of this letter that the ambiguous terms in which the Chief speaks of the confiscating documents enclosed as B. & C. leave it doubtful whether they be exactly forgeries.

He, however, states in his evidence that it is not usual to make use of his name even in the heading of documents sent from his Court when he is absent.

I have, &c.,

ROBERT H. SCHOMBURGH. ,

To

Colonel A. FYTCH,

&c., &c., &c.,

H. M. Commissioner,

TENASSERIM PROVINCES.

## A 2.

Copy.

NO. 19.

SIR ROBERT SCHOMBURGH

TO

EARL RUSSELL,

&amp;c., &amp;c., &amp;c.

BRITISH CONSULATE,

Bangkok, May 29th, 1864.

MY LORD,—I have the honor to lay before your Lordship the correspondence which I have held with his Majesty the King and the Siamese Authorities, with reference to a claim—which Moungh Shoay Gan, a native of British Burmah, had against the Chief of Cheingmai.

<sup>1</sup>  
Papers and Proceedings  
in cause Moungh Shoay  
Gan Vs the Chief of Che-  
ingmai.

Cheingmai, one of the most important and powerful tributaries of Siam, is situated to the north of this country; it is watered by the Meenam, as well as by several streams which run into the Salween river, on which river Maulmain is situated. For many years past, a considerable quantity of the teak imported into Maulmain has been brought from Cheingmai. Moungh Shoay Gan appears to have visited and resided in that province on several occasions, and, in 1859, obtained from Chow Rajahpoot, the third person in rank in the province, a ten years' lease of the jungle belonging to that Chief. A copy of this lease, drawn up in a style very common amongst both Laos and Siamese, is amongst the documents which

Forms part of en-  
closure 1.

I have the honor to forward, and is marked D. It is addressed to the Commissioner of Maulmain, and is intended as an announcement to the Public that the Rajapoot had granted the jungle to Moungh Shoay Gan. On the strength of this document, in accordance with the usual custom of the native foresters of Maulmain, Moungh Shoay Gan was enabled to borrow sufficient money to work the jungle that had been granted to him. He employed himself at that work for two years, and succeeded, after two years' labor, in felling and dragging to the bank of the Mhyneloonghee, a creek communicating with the Salween, 3,840 logs of timber.

About this time, Mr. Lenaine, an Eurasian resident in the Tenasserim Provinces, arrived in Cheingmai, and being well furnished with money by a merchant of Maulmain, soon got into favor with the head Chief of the Province. He obtained from that Chief a written order, making over to him (Mr. Lenaine) the whole of the

<sup>2</sup>  
Bill of Sale.

timber without owners, then lying in the Mhyneloonghee district. Soon after giving this order, which is amongst the other documents, and is marked A., the head chief appears to have proceeded to Bangkok, and left his nephew in charge. Lenaine then got from that nephew document B, which made over to him the logs belonging to Moungh Shoay Gan, together with those

<sup>3</sup>  
B. First confiscation or-  
der.

of several others. The authorities of Mhyneloonghee declining to carry out this order (probably on account of its injustice) Mr. Lenaine then got another order, marked C, by which he obtained possession of the logs. I may here state that it is entirely contrary to custom of the Head Chief or ruler of the provinces to levy any thing in the shape of duty on timber cut in the forests not belonging to him personally. After getting possession of the logs Mr. Lenaine sent them down to Maulmain in the usual manner. Batches of them arrived at different times. Moungh Shoay Gan brought action against Mr. Lenaine, claiming ownership of different batches which have his stamp, but was nonsuited, because the logs in dispute were proved by documents B. & C. to have been made over to Lenaine by the Chief of Cheingmai, in his own province, over which the Maulmain Courts had no jurisdiction. The parties then entered into a compromise, by which, on the receipt of 47,000 Rupees, Moungh Shoay Gan then bound himself not to proceed further against Lenaine on the other batches then on their way down.

Moungh Shoay Gan then came on to Bangkok, and arrived here in February 1862, but not having sufficient documents to prove his case, it was not then forwarded to the Siamese Authorities. He returned to Maulmain, and came back to this place early in 1863, accompanied by Captain Burn, formerly an officer in Civil employ in British Burmah. The complaint, after due enquiry, was forwarded to the Siamese Authorities, and after considerable delay, Captain Burn received letters from those authorities to the Chief of Cheingmai, directing that Chief to arrange the affair.

Captain Burn proceeded to Cheingmai, but not being able to arrange matters he returned here in October. Mr. Knox being then in charge wrote the letter, dated October the 7th, and an order was sent up for the Chief to come to Bangkok, and to bring a number of Witnesses named by Captain Burn.

Mr. Knox to Pauklai.

This order met the Chief on his passage down, and the messengers then proceeded to call the witnesses required, but as the Chief, unknown to the messengers, sent a contrary order, none attended.

In November, the Chief arrived in Bangkok accompanied by a Mr. Johnstone, formerly a merchant in Maulmain, and to whom Lenaine had made over (at least such is Mr. Johnstone's statement) the jungle claimed by Moungh Shoay Gan. It therefore appears that the Chief had made over the jungle in dispute to Lenaine. Mr. Johnstone acted as pleader for the Chief of Cheingmai, while Captain Burn filled a similar position on the part of Moungh Shoay Gan. The case came on for trial in December, and continued until the middle of April. As usual, in all Siamese Judicial Proceedings, the delays were intentional and vexatious. The Court was held at the Palace of his Royal Highness Krom Luang Wongsa, who for a long time, though he was by way of being a Judge in the case, was a strong partisan of the Chief. However, he appears latterly not to have liked the look of affairs, and the Chief of Cheingmai then got the Kalahome to interest himself in the business. A sitting was

held at the residence of His Excellency the Kalahome on March 7th, Mr. Knox being then present. Evidence was then brought out that documents *B.* and *C.* were forgeries, and the Rajapoot, being sworn, acknowledged document *D.* as having proceeded from himself, and said that he was perfectly willing still to abide by it.

The judges then stated their opinion that the jungle ought to be given to Moungh Shoay Gan, and that Moungh Shoay Gan ought to proceed against Mr. Lennane for the value of the logs, as he had obtained them on the strength of a forged document, knowing the said document to be forged. The head judge then went to inform His Excellency the Kalahome, who was in his inner apartments, and after a short time His Excellency requested Mr. Knox's attendance, and after the usual amount of compliments, informed that gentleman that the jungle could not be given to Moungh Shoay Gan, as that man had committed a murder in the Cheingmai province. Mr. Knox replied that if any thing like "satisfactory evidence" were brought forward, he would guarantee that the accused, Moungh Shoay Gan, should be put on his trial. After some further conversation Mr. Knox, being of opinion that His Excellency was determined that justice should not be done in the matter, left and reported his opinion to me. Letter No. 2\* was then written to H. M. the King, and after several days' delay, I received what purports to be

\* No. 6.

the Judges' decision on the case. I know for certain that several of the signatures were attached by order, the pseudo Judges being entirely unacquainted with the case, the documents never having been given them to read.

Forms part of En. No. 1

Enclosure No. 8.

After receiving this document, I addressed the enclosed letter marked No. 3 to H. M. the First King, and after a few days' delay, I requested Mr. Knox to wait on His Majesty. His Majesty received him very graciously, and after a long conversation agreed that the matter should be arranged by the Chief of Cheingmai giving over the jungle to Moungh Shoay Gan. The consequence of this was that, after two or three days, the parties in dispute came down to this Consulate, when the document marked *E.* was signed in my presence.

I cannot conclude this despatch without drawing your Lordship's attention to the conduct of His Excellency the Kalahome throughout the proceedings. I have been informed that, in a conversation which took place at the Royal Palace before the decision was sent in, His Majesty stated that the Burmese ought to have justice done them, but was persuaded by the Kalahome not to assent to the judgment on the ground that if these men gained their case, several others would come forward. He was also the person who prevented the Chief and Moungh Shoay Gan coming to an arrangement as mentioned in my enclosed letter to His Majesty, No. 3, and he did all in his power to prevent anything like a satisfactory adjustment of the case. This is not the first time that both my predecessors and myself have had to complain of his unfriendly conduct towards British interests, as can be seen by former despatches from this office.

With regard to the charge of murder laid against Moungh Shoay

Gan, I have reason to believe that there is no truth in it, and when the Siamese were asked to prosecute, they immediately declined.

The power of the Chief against whom the complaint was laid, the influence he got to bear in his favor, has rendered the adjustment of this case one of considerable difficulty, and I trust your Lordship will approve of the manner in which it has been conducted by this Consulate.

I have, &c.,

(Signed) ROBERT H. SCHOMBURGH.

### A 3.

#### COMPROMISE BETWEEN THE CHIEF OF CHEINGMAI, MOUNG SHOAY GAN, AND CAPTAIN BURN.

*Original in Siamese—marked by the Chief of Cheingmai, in presence of H. M. Consul—attested by him and approved, signed, and sealed, by Krom Luang Wongsa.*

#### TRANSLATION.

CHAO KHA WILOROT RAT SURIWONG, Ruler of Chiengmai, gives this document to Captain Burn and MOUNG SHOAY GAN, to state, as to the Forest of which MOUNG SHOAY GAN is the overseer, according to an agreement with Chao Rajapoot, by which the Forest is made over to him to superintend from the year Chulasakkarat 1220, to the year Chulasakkarat 1230—the Chief of Chiengmai will not take it away from him and give it to any other—in consideration that Captain Burn and MOUNG SHOAY GAN have ceased the prosecution of their suit so far as it concerns him, the Chief of Chieingmai—and have concluded all matters between them.

Written, Saturday, the 10th of the waxing of the 5th Moon, year Chaoet Chowk—(April 16th 1864).

*A true Translation,*

HY. ALLABASTER,  
*Acting Interpreter, H. M. Consulate.*

### A 4.

ON Wednesday, the 3rd day of the waxing moon, in the 8th year of the year Mamea 1221, October 1859.

Chow Xiengmai gives the timber the owners have cut, and dragged, and <sup>thrown away</sup> <sub>deserted</sub> on both banks of the Mei Yuom from Muang Yuom as far as the mouth of the creek Mei Min, the wood of MOUNG SHOAY GAN, MOUNG OOPAY, KOPUAKHA, SHOAY LEI, MOUNG KHI, MOUNG KALAY, MOUNG YOK, ONG POH, KO YEY, THI LONG PHO and MOUNG WENG. These 11 persons came and cut timber, dragged, and deserted it. The presents and duties have not been given unto Chow Xiengmai. For these reasons the wood that has been cut is all given to Mr. Lenaine.

## A 5.

THE letter of Chow Rajapoot of Xiengmai, sent in friendship to Chow Luang of Maulmain and to Ayabeng, &c., and the authorities of Maulmain.

The whole of the timber forest of Mei Yuom from the creek of Mei La Luanylong downwards to the mouth of the Mei Yuom belong all to Chow Rajapoot.

Chow Rajapoot has made Mounng Shoay Gan to overlook, "dooley" it, and to cut, and buy, and sell teak timber to traders as Mounng Shoay Gan pleases, and to allow any one to cut timber from the date 1220 to 1230. Within this period, any persons coming to cut timber in the forest are first to ask Mounng Shoay Gan. If Mounng Shoay Gan direct them to cut, they can do so; but if Mounng Shoay Gan should not direct them to cut, they cannot cut; because Chow Rajapoot has given Mounng Shoay Gan charge to overlook. If any Chow Nai Thow Khan, or any person, come to cut teak timber in the forest of Mei Yuom, they must first enquire of Mounng Shoay Gan. Should they not enquire, they are to be forbidden to cut.

## A 6.

I, EGAWARAA BOAMEE MAHA OIK, THARA DOE PADEE, owner of the Golden palace of Chiengmai, do hereby issue this mandate to you, Binya Ken and other Officers of the town of Mhineloonghee. Mr. Lenaine petitioned me as follows:—That all the logs which were in the water along the Mhineloonghee stream as far as Mhineloonghee town, as also those logs which were dragged down into the water below the town, including those in the tributaries of the stream, and they having been stamped and dragged down against orders, and no duty having been paid for the same, they were taken possession of, confiscated, and sold to Mr. Lenaine, and an order for delivery was given into the hands of Mr. Lenaine; who shewed the same to you, Binya Ken, and that you did not act up to the order, and did not deliver the timber, and that you connived with 11 Thitgongs, viz., Nga Shoay Gan, Nga Wine, Nga Oopay, Nga Bouk, Nga Youk, Nga Shoay Thai, Mounng Glay, Nga Kee, Nga Oung Pan, Nga Tan Thai, and Nga Tee long paw. Mr. Lenaine appointed Mounng Thongulai as his agent, who came and petitioned to me, the owner of the Golden Palace of Cheingmai. Therefore, do repeat and forward this order, sealed with stamp of Pony, by the hands of 3 Officers (Touts) You, Binya Ken, do not seem to care for the order, and as soon as the three Officers arrive, they are hereby enjoined to deliver into the hands of Mr. Lenaine's agent, Mounng Thongulai, the timbers of the said 11 individuals, and after delivery you are ordered to bring immediately, Binya Ken, Nga Shoay Gan and Nga Wine.

*True Copy,*

(Signed) E. B. SLADEN,

*Assistant Commissioner, 1st Class.*

## A 7.

THE letter of Chow Rajahpoot of Xiengmai to the authorities of Maulmain.

Moung Shoay Gan sent a letter saying—In the boundary of the Timber forest along the Mei Yuom, the whole are the forests of Chow Rajahpoot. Moung Shoay Gan has cut and felled Timber for a long time past. The authorities of Maulmain are aware of all. Now Mr. Lenaine went to Xiengmai, and begged to take all the timber in the Mei Yuom from the source of the mouth of the stream, and has begged to present Chow Xiengmai 10 Rupees per tree.

Chow Xiengmai has directed it to be given to Mr. Lenaine.

Mr. Lenaine has collected Moung Shoay Gan's timber, and sells it as he pleases. Moung Shoay Gan is at law with Mr. Lenaine, but does not gain the case. •Mr. Lenaine says that Chow Xiengmai directed the timber to be given to Mr. Lenaine. In Xiengmai, there is no other beyond Chow Xiengmai. Moung Shoay Gan cannot arrange further. Before it was said, the Timber Forest belonged to Chow Rajahpoot, now it belongs to Chow Xiengmai, who has given it to Mr. Lenaine. Regarding all the Forests in the country, originally when Chow Xiengmai, named Kauria, Chow Chang Phuah, and Chow Khan Fan, being three brothers, became princes of the country. Those three princes divided the country among themselves. The creeks of Ngow Cha, Charin, Chanai and Thai, belonged to Chow Xiengmai Kawila. All the Mei Yuom creek belonged to Chow Chuang Phuah ; all the Mhei Khong creek belonged to Chow Kham Fan ; and afterwards those divisions fell to the descendants of those princes. When those princes died, the laws of Chow Xiengmai Kawila descended to his children, the laws of Chow Khan Fan descended to his children. No one ever seized the other's property, the laws of the fathers descended to the children. Chow Han Kam, my father, was the son of Chow Chang Phuah, and inherited the land of Chow Chang Phuah.

The present Chow Haw Kaun is the son of Chow Kawila, and inherits the lands of Chow Kawila in the forest of Mei Yuom creek.

•Chow Han Kam, my father, inherited the lands of Chow Chang Phuah, which were divided among us three brothers. Muang Yuom to the north was divided into two portions, one was given to Chow Maha Thep, and the other to one Chow Rajahpoot. Towards the south as far as the mouth of the Mei Yuom creek was given unto Chow Mei Maha Phrom. To whom those lands belong is thus explained. Mr. Lenaine was aware that the forest belonged to me. •Chow Xiengmai, and told me, saying—The owners of the wood who have cut teak wood and dragged it to the water's edge, have no money to pay for the duties, and have left their wood and ran away to Maulmain, and have not come back. As to their coming back to pay the duties, such will never be the case, because they cannot procure any money. Now the rains and the floods are about to set in, and will float away all the timber, which will be lost for nothing. The timber that has fallen of its own accord, and that which the owners have cut and



dragged to the water and on shore, the owners have deserted, I, Mr. Lenaine, beg to buy it at 10 Ba. per log.

Chow Xiengmai then said if what Mr. Lenaine has said be true, he might take it.

Chow Xiengmai, consequently, gave a letter to take the timber that had no owners, and any wood that had been dragged and deserted without any owners he could take. I said to Chow Xiengmai, the timber forest in the Mei Yuom all belong to us three brothers. When Mr. Lenaine pays the duty on the timber, to whom will you give it? Chow Xiengmai said, whatever quantity of timber Mr. Lenaine takes from Chow Rajapoot's forest, the latter will receive the duty for the same. Whatever quantity he takes from Chow Maha Thep's forest, the latter will receive the duty for the same. Whatever quantity he takes from Chow Maha Phrom's forest, the latter will receive the duty for the same.

After Chow Xiengmai had thus spoken, Mr. Lenaine went away, but did not abide by what Chow Xiengmai directed. Formerly, Mr. Lenaine told Chow Xiengmai that he wished the timber the owners have deserted.

Mr. Lenaine, however, took also the timber which had owners, who had elephants dragging it, and put his stamp upon it. Mr. Lenaine said he had a letter from Chow Xiengmai.

When Mr. Lenaine went back the last time to Xiengmai, Chow Xiengmai was away at Bangkok. Chow Xiengmai took his only seal with him.

Mr. Lenaine's messenger went to get a letter, but Chow Xiengmai was absent.

The letter which the messenger took back as being a letter from Chow Xiengmai, can the authorities of Maulmain believe it to be true? Chow Xiengmai made an agreement with the authorities of Maulmain, that if they did not see the red seal, they must not believe. From whom Mr. Lenaine's servant got the letter, I do not know. The authorities have credited the letter, and have decided that the wood of Moug Shoay Gan should be given to Mr. Lenaine.

Moug Shoay Gan and other persons who cut timber in my forest have paid the duties, so I cannot consent to let Mr. Lenaine get possession of the timber.

I beg you will return the timber to Moug Shoay Gan, and the other owners.

## A 8.

FURTHER, Moug Shoay Gan complains of the Province of Zim-may as follows :—

The Prince of Zim-may took the teak wood of Moug Shoay Gan and others which had been cut down, and for which they had paid for the privilege of cutting to Chow Rajapoot, and sold it to Mr. Lenaine.

The Prince of Zim-may and Mr. Johnstone depose :—

Mr. Lenaine saw timber in the Mynlonghee district or Muang Yuom, with no one in charge, a request was made to the Prince of Zimmay that Mr. Lenaine wished to purchase the said timber. The Prince of Zimmay enquired of his relatives, whether this timber had been purchased, and the duty on the cutting had been paid or not. The relatives of the Prince of Zimmay replied, the timber was not sold, and the duty on cutting had not yet been paid. The Prince of Zimmay then made out a document giving Mr. Lenaine all the Timber in Muang Yuom which had no owners, but the timber which had owners, Mr. Lenaine was to have no control over. These facts are known.

Mr. Lenaine gave some Rupees and some gold, which was valued and reckoned as earnest money. Mr. Lenaine took the timber to Maulmain, and Moungh Shoay Gan and certain Burmese entered a complaint in the Court at Maulmain, that Mr. Lenaine took down the timber of Moungh Shoay Gan and others. When the Judge of the Court at Maulmain enquired of Mr. Lenaine, Moungh Shoay Gan and others, how their timber was marked, they replied their timber was stamped. Mr. Lenaine asserted that he had the Prince of Zimmay's certificate selling the timber to him, and Moungh Shoay Gan appealed to the letter of Chow Rajapoot which he had in his possession. Upon which Mr. Lenaine paid a certain sum of money to Moungh Shoay Gan and the other Burmese, and Mr. Lenaine made an agreement to which their names were appended and deposited it in the Court at Maulmain. This affair, which Moungh Shoay Gan and the others brought into Court at Maulmain, and for which Mr. Lenaine paid money to Moungh Shoay Gan and the others, and an agreement was made, is now settled, and the money and gold which Mr. Lenaine had given as earnest money to the Prince of Zimmay, Mr. Lenaine has obtained back in full from the Prince of Zimmay, so the Prince of Zimmay had nothing.

That Moungh Shoay Gan, Moungh Oopay, and Captain Burn should bring up a subject which has been settled, to be re-tried by the Government of Siam, is not right, and we beg that H. B. M. Consul will investigate the matter, and decide upon it equitably.

With reference to the matter which Moungh Shoay Gan brings forward that Chow Rajapoot gave him a pass permitting him to cut timber at the Northern stream in the Mynlonghee district for 10 years, that Moungh Shoay Gan has agreed to pay the duty on cutting 4 Rs. per tree, the Judges called for the pass which it was asserted Chow Rajapoot had given to Moungh Shoay Gan, and had it translated and the substance of which is as follows :—

"The letter of Chow Rajapoot to the Governor of Maulmain.  
 "The timber of Muang Yuom belong to Chow Rajapoot. Chow  
 "Rajapoot put them in charge of Moungh Shoay Gan to superintend,  
 "cut, purchase and sell the timber to merchants as he pleases, from  
 "the year 1220 to the year 1230 Siamese Civil Era. If any one  
 "wishes to cut timber in the forest of Moungh Yuom, he must en-  
 "quire of Moungh Shoay Gan. If he does not ask Moungh Shoay Gan,  
 "he is forbidden to cut."

When Chow Rajapoot was brought forward, sworn, and examined, he deposes :—

That originally MOUNG SHOAY GAN came and resided in ZIMMAY, and CHOW RAJAPOOT permitted MOUNG SHOAY GAN to oversee the timber in the forest of MUANG YUOM which was the inheritance of CHOW RAJAPOOT. MOUNG SHOAY GAN was to charge them 3½ Rs. per tree. At the present time the charge for timber is 4 Rs. per tree. From the time that MOUNG SHOAY GAN received the paper authorizing him to superintend the forests and to collect the duties from the cutters of timber, MOUNG SHOAY GAN did not revisit CHOW RAJAPOOT, but he went to reside in MAULMAIN. At one time, when the mother of CHOW RAJAPOOT died, MOUNG SHOAY GAN brought CHOW RAJAPOOT 2,000 Rs., then and returned, and at another time, in the year of Cock, the 11th of the present reign, MOUNG SHOAY GAN sent a horse and a saddle mounted with gold, weighing 31 ticals and 3,000 Rs. to THAN SAM XHAI to be delivered to CHOW RAJAPOOT. Sometime after CHOW RAJAPOOT ordered KAMADA to tell MOUNG SHOAY GAN at MAULMAIN, that as MOUNG SHOAY GAN had not come to superintend the cutting of the teak, others were desirous of cutting, and they were kept in abeyance owing to CHOW RAJAPOOT's deference to MOUNG SHOAY GAN. MOUNG SHOAY GAN sent word by KAMADA that the duties for cutting timber could not yet be paid, and that he was engaged in a law suit with Mr. LENAINÉ, and that if CHOW RAJAPOOT did not give him a certificate, he would lose his case with Mr. LENAINÉ, and that if he obtained the certificate from CHOW RAJAPOOT, he would pay the duties for the timber. CHOW RAJAPOOT was anxious to receive the duties, and therefore sent a letter to the Commissioner of MAULMAIN which has already been referred to.

From the time that CHOW RAJAPOOT gave the letter or pass to MOUNG SHOAY GAN, MOUNG SHOAY GAN never returned to ZIMMAY, whereupon CHOW RAJAPOOT wrote to the Commissioner of MAULMAIN again requesting that the pass permitting MOUNG SHOAY GAN to superintend the forest should be returned to CHOW RAJAPOOT. The substance of that letter is as follows:—

“When MUANG YUOM was destroyed, MOUNG SHOAY GAN fled to MAULMAIN. He returned again to ZIMMAY, and solicited the privilege of cutting teak timber for 10 years. A paper was given him on the supposition that he would remain and cut timber, but MOUNG SHOAY GAN on receiving the paper went to MAULMAIN, and did not superintend the forest from that time till the present.

“The Commissioner of MAULMAIN is requested to obtain from MOUNG SHOAY GAN the paper which has been given to him, and to return it by the servant of CHOW RAJAPOOT.”

Having examined the letter and deposition of CHOW RAJAPOOT, we obtain these facts.

Our views are as follows:—

The letter of CHOW RAJAPOOT, which was sent to the Commissioner of MAULMAIN in the Siamese Civil Era 1220, giving MOUNG SHOAY GAN the superintendence of the forest was simply a document for public information, that CHOW RAJAPOOT had made MOUNG SHOAY GAN the superintendent of the forest of MUANG YUOM. It was not an agreement. Agreements which are made and recognized to be valid

in the Kingdom of Siam, must bear the signature of the contracting parties, and each party must have a copy. Then it will be a valid agreement.

The letter of Chow Rajapoot, to the Commissioner of Maulmain in the Siamese Civil Era 1224, asking for the paper granting Moungh Shoay Gan the superintendence of the forests, in substance, was as follows :—

“ The Chow Rajapoot gave a paper granting him the superintendence of the forest of Muang Yuom, and Moungh Shoay Gan went to live in Maulmain, and did not superintend the forest. Therefore Moungh Shoay Gan will no longer be allowed to superintend the forest, or cut timber.”

The Commissioner of Maulmain replied that he had called Moungh Shoay Gan to him, and questioned him. Moungh Shoay Gan said that when he was prosecuting Mr. Lenaine, the Maulmain judges sent that document to India, but when the Indian judges returned it, the paper would be forwarded to Chow Rajapoot.

Regarding the letter of Chow Rajapoot to the Commissioner of Maulmain, granting the superintendence of the Muang Yuom forest for 10 years, Moungh Shoay Gan received that letter in the Siamese Civil Era 1220, and went to reside in Maulmain, and did not superintend the forest, thereby injuring the interests of Chow Rajapoot until the Siamese Civil Era 1224. Such conduct bears resemblance to the conduct provided against in the treaty, Art. IV (“ when British subjects purchase lands or houses. ”)—

“ It will be necessary, that the British subject shall in the first place make application through the Consul to the proper Siamese Officer, and the Siamese Officer and the Consul having satisfied themselves of the honest intentions of the applicant will assist him in settling upon equitable terms the amount of purchase money, will mark out and fix the boundaries of the property, and will convey the same to the purchaser under sealed deeds, whereupon he and his property shall be placed under the protection of the Governor of the district and that of the proper local authorities, he shall conform in ordinary matters to any just direction given him by them, and will be subject to the same taxation that is levied on Siamese subjects. But if thro’ negligence, the want of capital, or other cause, a British subject should fail to commence the cultivation or improvement of the lands so acquired within a term of 3 years from the date of receiving possession thereof, the Siamese Government shall have the power of resuming the property upon returning to the British subject the purchase money paid by him for the same.”

This is the substance of Art. IV of the Treaty. Whereas Moungh Shoay Gan received a paper making him superintendent of the forest of Muang Yuom from the Siamese year 1220, and neither paid attention, nor superintended the forests till the Siamese year 1224. The three years limit has expired. If that paper were an agreement between the parties, similar to the usual agreements of the country, it has become useless. But the paper upon which Moungh Shoay Gan bases his complaint is not an agreement. With reference to

Moung Shoay Gan's resuming the cutting of timber, it is proper he should have personal conference with the Tributary Prince of Zim-may, Chow Rajapoot, and their relatives, as the province has been under the charge of the Prince of Zim-may and relatives for successive generations. The forests of Muang Yuom, which is in the territory of Zim-may, are wholly under the jurisdiction of the Prince of Zim-may and his relatives, and entirely at their disposal, being rulers of the country, as far as its internal administration is concerned.

With regard to the duties for the privilege of cutting timber belonging to Chow Rajapoot, and the money and goods which Moung Shoay Gan has given Chow Rajapoot, let Moung Shoay Gan and Chow Rajapoot bring together their accounts and make a final settlement.

The matter which the Prince of Zim-may introduced charging Moung Shoay Gan of taken the wife of a Ngien man, and afterwards killing him, and when the Yangdongs knew it, they collected an army attacked and destroyed Moung Yuom, and Moung Shoay Gan consequently fled to Maulmain, is in our opinion that Ngien is not subject to Zim-may, neither is it a tributary, nor friendly state, and the affair having taken place some time ago, and also there being no prosecutor, better be waived and ought not to be entertained.

These are the facts.

## A 8 a.

### TRANSLATION OF A LETTER FROM THE CHIEF OF XIENGMAI TO H. B. M. CONSUL.

CHOW KHA TIRBOROT RAT SURIWONG, Ruler of Xiengmai, to Sir Robert Schomburgh, the British Consul, greeting.

I do declare most truly that in the year Chula Sakkarat 1221, I sold to Mr. Lenaine only wood which had no owners—I despatched officers of Xiengmai to stamp the wood with the figure of an Elephant, the Seal of Xiengmai—they stamped only 359 logs. Mr. Lenaine took down other 305 logs before they could be marked—Mr. Lenaine paid only for the 359 logs which were stamped. For the 305 logs which were not stamped he did not pay.

The wood belonging to the eleven foresters, Nga Shin Gan, Nga Wai, Nga Opai, Nga Meek, Nga Youk, Nga Shin Thai, Moung Calai, Nga Ki, Nga Ong Poh, Nga Ta Nai, Nga Thi Long Poh, who are concerned in the present suit was marked every log by its owners.

As for Mr. Lenaine's statement that I sold to him 6,840 logs, I did not do so. I sold to him only 359 logs—no more.

The two documents which set forth that I authorized Mr. Lenaine to take the timber of the eleven foresters, were not issued by me, and I know not whose letters they are.

In the beginning, when Mr. Lenaine came to Chiengmai, on Wednesday the 3rd day of the waxing eighth moon, year Mamea Ekasok, Chula-sok Karat 1221, he begged to purchase wood and before returning to Maulmain, he took five ruby rings, four pair emerald earrings, and two chains, valued altogether at 7,237 Rupees and a half, and left them as security for the purchase of teak, promising that on the 3rd month of 1221 he would bring the full price of the teak, otherwise the Chief of Chiengmai was to keep all those articles.

In the fifth moon of the year Wan To Sok Chula sakarat 1222, Lenaine came back, paid the price of 359 logs, and received back all the jewelry.

*This is a true Translation*

Dated, Saturday, the 10th of the waxing of the 5th moon, Year Choet Chorok (April 16th 1864.)

*A true Translation*

(Signed) H. Y. ALLABASTER,  
*Acting Interpreter.*

The original Siamese document is in the archives.

(A true Copy,)

(Signed) ROBERT H. SCHOMBURGH,

### A 8 b.

WEDNESDAY 3rd, waxing of Kasong 1221, Mr. Lenaine of Maulmain gave unto the owner of the Golden Palace of Zimmay, 5 gold rings set with rubies, 1 valued 3,500, one 600 Rs., one 500 Rs., one 400 Rs., one 300 Rupees; 4 pairs gold nahdonges (earrings) set with emeralds, each valued Rupees 350, value of the four 1400 Rupees; two Bayets, gold necklaces, each weighing 10 Ticals and 12 annas, value Rupees 268-12-6, of both Rupees 587-8-0; the total value of the whole as above mentioned amounting to Rupees 7257-8-0, as earnest money, and in consideration of which the owner of the Golden palace of Zimmay do hereby sell to Mr. Lenaine all the timber lying felled or dragged in the Minelonghee stream, its banks, and other landing places, of the Minelonghee town, Kwickpiet, and up to the junction of the Thongheen rivers, whatever teak timber there may be, at the rate of 10 Rupees per log, the value of which is to be paid during the Natdau 1221, and in failure of payment Mr. Lenaine forfeits all the jewels valued 7257-8-0 to make good the amount at the rate of 10 Rupees per log received, according to an account taken, and whereas the Thitgongs (foresters) after having felled, worked, and dragged it to the stream and other landing places, did not conform to the rules and regulations in force, and not having paid revenue on them, and considering the timber will float away and be lost, it being the rainy season, and the Thitgongs not being present, the owner of the Golden palace of Zimmay, therefore sells to Mr. Lenaine the whole of timber felled, worked, and dragged by them. If any of them are dissatisfied, and wish to say any thing to the owner of the Golden palace of Zimmay, they may come over and do so, and the owners of the timber have nothing to say to Mr. Lenaine. Both parties agree and execute this agreement in duplicate, one of which is given to Mr. Lenaine, and the other kept as a record in the Court of Zimmay.

*True Copy*

(Signed) E. B. SLADEN,  
*Assistant Commissioner, 1st Class.*

### A 8 c.

On the 3rd. August 1860, Burmese year 1222, 2nd day of Wah Goung waxing, that we, Moung Shoy Gan and Moung Oipay, instituted a case against Mr. Lenaine on account of Mhynedloongyee timber, and that we agree to withdraw the said case on condition that Mr. Lenaine is to pay Rupees 47,000, and we will make over all our timber, namely those containing our mark. The form of our own mark is as per margin, and also all our timber that may be found on the banks of Choungs or places, or in any person's or persons' possession, that Mr. Lenaine is authorised to de-

and take it for himself as his own, and also all the Timber in our possession, we Moung Shoay Gan and Moung Oopay, shall be made over to Mr. Lenaine, and that Mr. Lenaine has to pay, on the date of this agreement Rs. 20,000 to Moung Shoay Gan and Moung Oopay, and the balance Rupees 27,000 shall be paid in three days after we withdraw the said case (with the exception of the timber we had delivered to Mr. Grassmann the year before last) the case which is concerned in the present suit that we, Moung Shoay Gan, Moung Oopay, and Mr. Lenaine do withdraw together. Should Mr. Lenaine fail to pay the balance Rupees 27,000 within 3 days after date of withdrawal, that Mr. Lenaine has to forfeit that amount which he has paid 20,000, also he has no more claim or claims on the said timber, and that Moung Shoay Gan and Moung Oopay have a right to sell the timber for themselves.

Should Mr. Lenaine pay the balance amount Rupees 27,000 within 3 days after date of withdrawal of the case to Moung Shoay Gan and Moung Oopay, that they are to deliver the whole of the Timber which is in their possession, and also that which may be in the hand of their coolies. Also Mr. Lenaine is authorised to pick up and pay the salvage for the timber that may be found, and take the same for himself. Should Moung Shoay Gan and Moung Oopay fail to deliver the whole of the timber to Mr. Lenaine, that they are to return to Mr. Lenaine for the amount they have received Rupees 20,000, double the same amount viz. Rupees 40,000, and also Moung Shoay Gan and Moung Oopay have to forfeit all their timber bearing their own mark. Mr. Lenaine has to take them all to himself, and also we further bind ourselves, should Moung Shoay Gan and Oopay in any way join ourselves with any other person or persons who have any dishonest dealing in the same, that we will undergo any kind of punishment given us by the Court authorities, and that each of us must pay our own cost, and which we agree and consent to the said terms made in this agreement, and sign our signature in presence of witnesses.

*Witnesses.*

(Signed) MOUNG QUAY NYO.

" " MYAW.

" " MYTH NAY.

" " OUNG GYNE, writer,

(True Copy)

(Signed) SHOAY GAN,  
OOPAY.

(Signed) C. O. JOHNSTONE.

*Translated by T. G. Cox.*

**A 8 d.**

On Monday the 29th February 1864, His Royal Highness Krom Luang Wongsa Dhiray Sinde came to the Pavillion in front of the Audience Hall of the old Royal Palace to transact Government business, together with Chow Phya Tonmay Phya Srisa Thep, Phra Mahasayay Koo Borotrit lattan, and directed Chow Rajapoot to take an oath before the temple Cerim-tuaram in the presence of Captain Burn and Moung Shoay Gan.

Chow Rajapoot having been sworn stated as follows :—

The year and month he does not remember, but it is about 7 or 8 years ago, Moung Shoay Gan went to live in Xiengmai. Moung Shoay Gan obtained a wife and lived with Chow Rajapoot until two children were born unto Moung Shoay Gan, a son and a daughter.

Chow Rajapoot sent Moung Shoay Gan to look after the timber forests in the vicinity of Muang Youm, telling him if any one came to fell teak timber in the forests of Muang Yuom, which were the portion of Chow Rajapoot's inheritance, Moung Shoay Gan was to collect only 3½ Rupees

per tree. From that time, Mounq Shoay Gan received the documents appointing him to look after the timber forests, and to collect the duty on the trees felled. At present the duty is 4 Rupees per tree. Mounq Shoay Gan did not come back to see Chow Rajahpoot.

At one time, in what year Chow Rajahpoot does not remember, when Chow Rajahpoot's mother died, Mounq Shoay Gan returned, and gave Chow Rajahpoot 2000 Rs.; after which he went away. In the year of Cock (1861) Mounq Shoay Gan sent a horse with gold mounted trappings and 3,000 Rs. in cash to Thou Tama en Chai of Muang Yuom, to be delivered to Chow Rajahpoot, since which Mounq Shoay Gan never came back to Rajahpoot.

Mounq Shoay Gan went to live in Maulmain. At one time, the year cannot be remembered, Kamada, the servant of Chow Rajahpoot, went to trade in Maulmain. Chow Rajahpoot directed him to tell Mounq Shoay Gan that if Mounq Shoay Gan did not come to look after the cutting of the timber, other persons would come and fell it, but had consideration for Mounq Shoay Gan. Mounq Shoay Gan then directed Kamada to tell Chow Rajahpoot that the duty on the Timber cut, due to Chow Rajahpoot would not be paid, as Mounq Shoay Gan was at law with Mr. Lenaine. If Mounq Shoay Gan did not receive a letter from Chow Rajahpoot, Mounq Shoay Gan would lose his case with Mr. Lenaine. If he got Chow Rajahpoot's letter, he would perhaps pay the duty on the Timber cut. Chow Rajahpoot being desirous of obtaining the duty due him, sent a letter to the Commissioner of Maulmain.

The nature of which will be seen by referring to the said letter.

From that time Chow Rajahpoot sent the letter, Mounq Shoay Gan never returned. Chow Rajahpoot therefore sent a letter to the Commissioner of Maulmain requesting the paper formerly given to Mounq Shoay Gan, giving Mounq Shoay Gan charge of the Forests, should be returned to Chow Rajahpoot, as will be seen by referring to the said letter.

### A 8 e.

ON Monday the 7th March, the Court directed Chow Rajapoot to be sworn and examined as follows :—

*By the Court.*—When Chow Rajapoot gave Mounq Shoay Gan the letter, did Chow Rajapoot do so because Mounq Shoay Gan had rented the forest entirely to cut timber for 10 years, or only authorized him to be overseer to allow other people to cut, and to collect the duties for Chow Rajapoot ?

*Chow Rajapoot.*—I gave Mounq Shoay Gan a letter which explained the matter. The letter was produced and read by the Court in presence of Chow Rajapoot, who acknowledged it that it was his letter.

*By the Court.*—The letter written in the name of Chow Xiengmai, and sent by the hand of Thou Poulahan, Thou Khamlie, and Thou Charawonee to Phya Khmau of Muang Yuom, enquiring what object Phya Khman had in not delivering the timber to Mr. Lenaine, and requesting Phya Khman to conduct Mounq Weng and Mounq Shoay Gan to Chow Xiengmai. When this letter was sent, was Chow Xiengmai present in Xiengmai, or was he in Bangkok, and who wrote the letter ?

*Chow Rajapoot.*—The people of Muang Yuom told me that there was a letter from Chow Xiengmai giving the timber in the Muang Yuom forest to Mr. Lenaine. At that time, Chow Xiengmai was in Bangkok. I consequently wrote a letter to the authorities of Maulmain, asking if there were two Chows Xiengmai. I refer you to my said letter. I am not aware who wrote the letter to Phya Khman of Muang Yuom.

*By the Court.*—When the Chow Xiengmai is absent from Xiengmai, is



*Chow Rajapoot.*—When the Chow Xiengmai is absent, the person to whom he has given charge of the country's affairs writes all letters sent to any town in the name of the person in charge.

The Princes and Nobles of Xiengmai have no seals of their own. There is only one seal having the figure of the Elephant, which is the Government seal. If the person in charge write letters to any place, he must use this Elephant seal.

## A 8 f.

### CHOW XIENGMAI'S STATEMENT.

CHOW XIENGMAI stated before the Court, with reference to the Government customs of Xiengmai, as follows :—

If the Chief of Xiengmai be absent on business, or come to Bangkok, he orders a certain person to take charge of the Government.

That person has authority over the Chow Nais and Thou Khuns of the country.

In the year of Goet, 1221, when I came to Bangkok, I left the affairs of the country in the charge of Chow Rajapoothairai. Mr. Lenaine sent a letter to Xiengmai. Chow Rajapoothairai sent a letter using my name to Phya Khuam of Muang Yuom to deliver timber to Mr. Lenaine. The letter was not written in Chow Rajapoothairai's name, but was sent in my name, which was contrary to the customs of the country.

## A 8 g.

To

SIR R. H. SCHOMBURGH,

*H. B. M. Consul,*

BANGKOK.

The humble petition of Moungh Shoaay Gan, Timber forester, resident of Maulmain, a British subject, by his Agent.

RESPECTFULLY SHEWETH,

1.—That, in the year 1221 Burmese Era, corresponding to 1860 A.D., your petitioner obtained a written pass for ten years' possession and uninterrupted cutting of Teak timber in the Mhyneloonghee creek, above the town of Mhyneloonghee, from a Xiengmai chief named Tchow Rajapoot, your petitioner agreeing to pay duty at the rate of 4 Rs. 8 annas per tree for the same.

Original pass stamped  
is in petitioner's possession.

2.—That your petitioner borrowed large sums of money from the merchants of Maulmain at a very high rate of interest, some of it as high as 5 per cent, per mensem, and purchased 20 elephants, and proceeded with a large number of servants into the above forest.

Documents in the Vernacular for money borrowed as under, are now in petitioner's possession. 11,765 Rs.  
14,000  
8,000  
33,765 Rs.

3.—That your petitioner succeeded in felling and dragging 3,840 logs of Teak timber after two years of hard and laborious service.

4.—This timber was without any reason confiscated by the Governor of

An attested copy of *Plaint in the Maulmain Courts* by A. Lenaine, stating he had given the Governor of Xiengmai a receipt for 1860 logs, and an attested copy of Bill of sale confiscating petitioner's timber and selling it to A. Lenaine are in petitioner's possession.

Xiengmai (the owner of the Golden Palace) and along with about 2000 other logs belonging to others, was sold to one A. Lenaine, merchant from Maulmain, for the sum of 10 Rs. a log.

5.—Your petitioner, on hearing

of the arbitrary and unjust act of the Governor of Ziengmai, proceeded to Maulmain, and there incurred a vast expenditure in stamps and pleader's

Amount paid in Pleader's fees above 13,655 Rupees.

fees, in order to endeavour to maintain his rights in the Court, but was

Attested copy of extract of proceedings of Assistant Commissioner's Court, dated 27th June 1860, is in petitioner's possession. The parties claim under chiefs wholly independent of this Court, and were the Court to enquire into such claims it would be adjudicating upon the interest of parties not before it, and in no way subject to it.

thrown out by the ruling of those Courts in all Timber suits, viz, that they cannot enquire into matter which takes place in another state not subject to British jurisdiction. Consequently, your petitioner lost his case, and the bill of sale above alluded to (in para 4) was maintained.

6.—It is against this bill of sale

that your petitioner seeks redress. It

Original letter in the possession of petitioner, it having been granted to him for the space of six months, by order of Commissioner's Court, to enable him to seek redress before the British Consul here.

purports to have sold your petitioner's timber to one A. Lenaine, on the ground of your petitioner having failed to pay duty to the owner of the Golden Palace, Governor of Xiengmai, whereas your petitioner never cut timber in his forests, but in the

forest of Chief Rajapoot, to whom he paid duty, who wrote to the Commissioner of Maulmain acknowledging the receipt of all duty in full from your petitioner for timber there in litigation between himself and A. Lenaine.

7.—Under these circumstances, your petitioner begs to lay claim to the full price of his 3,840 logs at 60 Rupees per log, the Maulmain market rate,—2,30,400 Rupees.

8.—Value of 10 elephants lost in the forest, seized by thieves during petitioner's absence from the forests, prosecuting his suits in the Maulmain Courts, caused by the aggressive acts of the Governor of Xiengmai.

Value of 3840 logs, at 60 Rupees.....230,400

Value of 10 elephants.....14,000

Total Amount.....244,400

Your Petitioner humbly trusts that his prayer will meet with the early attention of your Honor.

And in duty bound,  
Shall ever pray.

BANGKOK, }  
3rd March 1863. }

A. S. h.

IN THE COURT OF HIS ROYAL HIGHNESS PRINCE KROM  
HLUANG WONGAS, BANGKOK, SIAM.

MOUNG SHOAY GAN AND CHIEF OF ZIENGMAI.

THE defence already filed in the above case being considered too gener-

al and not sufficiently explicit, the defendant begs leave of the Court to allow him to supplement it by the following revised statement, which he hopes will be conclusive ; viz.

1st. As head and responsible Chief of the Ziangmai country, defendant's orders are absolute as regards all persons within jurisdiction, whether the same relate to forest work, or any other kind of business, and that the unauthorized conduct of any of his subordinates cannot, unless in the perseverance of higher authority, be held as compromising the validity of his acts.

2nd. The defendant denies, in the first place, the right to bring this action, under any circumstances, that right being barred by the compromise effected between Plaintiff and Mr. A. Lenaine of Maulmain (as per document produced) whereby the latter bought out absolutely all claim upon the wood in question for a specific sum in cash, which payment was duly made and delivery effected, Plaintiff being held responsible by said agreement for severe punishment in the event of making (as in the present case) fraudulent attempts to disturb said settlement.

3rd. Defendant further submits that even apart from the above settlement, he was quite justified, when so inclined, to sell the wood in question, the duty not having been paid upon it. The letter produced purporting to be Chow Rajapoot's is stated by him no receipt for any specific sum, as none in fact was so paid to him, but merely a general letter intended to assist his friend Shoay Gan against their mutual enemy, A. Lenaine, and from which Shoay Gan and Chow Rajapoot expected to derive large pecuniary advantages, if successful.

4th. Defendant is further prepared to shew that Moungh Shoay Gan could not under any circumstances, sue for the value of the wood in the Maulmain, English, or any other market, but, in suing as he does for value, not damages, the value in question must be the market rate of the wood so prepared in the forest where it then was, and which it will presently be shewn did not amount to much more than half of the gross cash received by Plaintiff from various sources on its account, leaving it quite preposterous his trying to get paid double that amount a second time, thus.—

Cash received from Mr. Lenaine as compromised.	Rupees 47,000
Cash received from A. Lenaine, as advance from Grasemann & Co. for some of the number of the logs now claimed and delivered by Moungh Shoay Gan to them, in full of their advances.	" 30,000
Advance paid by A. Lenaine to Moungh Shoay Gan, on a former agreement, for the sale of this same wood to him at Rupees 20 per log, but which A. Lenaine could not then complete and allowed to lapse.	" 10,000
<hr/> Total Rupees 87,000 <hr/>	
This divided by 3,840 logs as claimed, per log.	Rupees 22 8 0
Duty which ought to have been paid by Moungh Shoay Gan.	" 4 8 0
Working out expenses (duty of sellers.)	" 3 0 0
<hr/>	
Gives equivalent in value to per log.	" 30 0 0 <hr/>

Whereas the current price in those forests for timber, *Duty paid*, be it recollected and worked out as above is Rs. 15 @ Rs. 20 per log, according to quality, so that Moung Shoay Gan without paying either duty or working out expenses, actually received in cash Rs. 22-8 per log, when he would only be entitled according to market rate, and after making the above deductions to Rs. 10 @ Rs. 11 per log, shewing at a glance the absurdity of the present claim.

5th. Defendant is not responsible for the elephants alluded to in the Plaint, as they are there stated to have been lost, and stolen by thieves in the forest, and not by any Government Officials. Apart from which, they have been paid by Oopay, in his compromise with Moung Shoay Gan. Neither is Defendant liable for any money borrowed by Plaintiff, of which, by the way, the only sum known is that from Messrs Grasmann & Co., in liquidation of which some hundreds of the very logs here claimed for were delivered to them and the account closed.

6th. The case excluded in the compromise between the parties aforesaid was that of A. Lenaine against Messrs Grasmann & Co., as representing themselves, Moung Shoay Gan and the others interested, which has since been given in favour of A. Lenaine by the Highest Court in British India.

Thus upholding the Chief's right in acting as he did, and ignoring the truth of the letter given by Chow Rajapoot purporting to clear Moung Shoay Gan from liability to pay further duty. Copy of this decree is at the British Consulate.

7th. The compromise in question was made when A. Lenaine and not Moung Shoay Gan had lost the case in the highest Maulmain Court, otherwise why should the money be paid if A. Lenaine had gained?

8th. As regards the Permit for the Forest given by Chow Rajapoot to Moung Shoay Gan, now in the possession of Captain Burn, Chow Rajapoot holds the reply of the Deputy Commissioner, Maulmain (to his letter requesting him to return the same) assuring him (Chow Rajapoot) that it should be forwarded so soon as he received it back from Calcutta, but has never yet been sent, and which he now claims. In conclusion, it will thus be evident that Moung Shoay Gan has no right to bring this action either on the ground that the compromise had regard to A. Lenaine only, or that the duty had been paid, and that (supposing for the sake of argument) either of these points untenable, it then becomes obvious that he has received *actual cash* double the value of the timber at its *full market rate* in the Forest where it was sold, and which, as the value alone is to be considered in this case, has actually given him much more than he was willing to sell it for himself previously, and had he not been encouraged by his Pleader to institute this suit, there is every reason to believe none would ever have been brought, as it is well known that Plaintiff had long abandoned this Mineloongyee business, and engaged in timber operations elsewhere,

(Signed) C. O. JOHNSTONE,  
*Pleader for Defendant.*

BANGKOK, }  
The 15th December, 1863. }

A 8 i.  
IN THE PRINCIPAL COURT OF BANGKOK.  
MOUNG SHOAY GAN  
*Versus*  
CHIEF OF XIENGMAI.

THERE is very little fresh matter in the supplementary defence which the Court have permitted to be filed, which has not already been disposed of.

1st. That is complaining against this very power certainly absolute in

Xiengmai alluded to by the Defendant's agent, that Plaintiff is now here. Shoay Gan being a British subject has sought and obtained that protection which the British Government never refuses to those under her protection, whom she considers to have been oppressed by the acts of any person whatever, and which, moreover, she is as ready to render the citizens of foreign states when hardly dealt with by her own officials.

2nd. The new reading (given in para 2) of the agreement between Lenaine and Shoay Gan, has not altered my former opinion already expressed. I still state that it does not refer in any way whatever to the Xiengmai Chief; and as it is before the Court they can form their own opinion.

3rd. Para 3 of the supplementary defence admits the receipt given by Chow Rajahpoot for duty—Chow Rajahpoot being the owner of the forest, his receipt would hardly be questioned but by that absolute power before alluded to, his receipt being in entire accordance with former customs in the Laos states, which Shoay Gan is prepared to prove. The receipt consists of a letter addressed to the Commissioner of Maulmain, it bears the initials of that officer, and was lent by him to Shoay Gan with a view to obtaining his rights. It has already been produced in the Court—translated and forwarded with the King's orders to Xiengmai. The original letter is still in Shoay Gan's possession, and will be produced.

4th. Shoay Gan claims the full amount of loss he has sustained at the hands of the Chief of Xiengmai. What that loss is it is for the Court to decide. I deny in toto the conclusion that the agent for the Defendant has come to, viz. that Shoay Gan has only a right to receive the forest market value, and that he has already received twice that value. The different sources of the amount totalled up and said to have been received by Shoay Gan, alluded to by Defendant's pleader, being purely imaginary, or have been settled apart from any matter now at issue between Plaintiff and Defendant. The first amount of 47,000 Rupees was given to Shoay Gan by Lenaine on an agreement, the consideration of which was that he made over all timber connected with the Mhine-loon-gyee law-suits, and withdrew all law-suits then in Court within the space of three days. Shoay Gan acted his part of the agreement, and Lenaine gave him the money. It was further agreed between them that no fraudulent combinations were to be entered into.

The second amount of 30,000 Rupees alluded to as having been received by Shoay Gan from Grasemann has been repaid by Grasemann to Lenaine agreeably to the orders of the Highest Appellate Authority in Bengal, which maintained Lenaine's claim to Shoay Gan's timber, Shoay Gan's right to sell to Grasemann being thrown out, and the Bill of Sale of the Chief carried the day, the Court ruling the right of retaking or confiscating reserved to the vendor was not matter for consideration in the present case. The Maulmain Court never questioning that right, as is plain from the ruling of the Court in the first instance. The parties claim under Chiefs wholly independent of this Court, and were this Court to enquire into such claims, it would be adjudicating upon the interests of the parties not before it, and in no way subject to it.

The 3rd amount of 10,000 Rupees is a matter which has been settled by compromise between Shoay Gan and Lenaine, and it was originally an amount advanced by Lenaine, as Defendant's agent states, for the purchase of this very timber, Lenaine agreeing at the same time to advance as much more money as might be required for working the timber, but Lenaine either had not the means to continue his advances, or preferred the more summary mode of purchase direct from the Chief. That he considered himself that he had no claim is manifest, as he based all his claims on the Bill of Sale given him by the Chief. A copy of Lenaine and Shoay Gan's agreement on receipt of first amount, will prove the 47,000. It will be produced. The final decree of the High Court of Bengal in Lenaine's

and Grasemann's case, copy attested of Assistant Commissioner's ruling, and Grasemann's declaration of payment of 29,500 and 500 Law expenses, will be produced to prove 2nd amount. Copy of Lenaine's plaint and compromise in original with him will be produced to prove 3rd. amount.

5th. Whether Defendant is responsible or not for the loss of plaintiff's elephants is a question for the Court to decide. Plaintiff left his elephants in the Forest during his absence in Maulmain connected with the oppressions of the Chief. His elephants were taken away.

6th. The case excluded from the document of A. Lenaine and Shoay Gan is the case of Grasemann. It was given as Defendant's agent truly states, in favour of Lenaine, but that decision did not, as he erroneously expresses it, uphold the Chief's right in acting as he did. The right of retaking or confiscating reserved to the vendor is not matter for consideration in this case. The Assistant Commissioner's ruling alluded to fully in para 4 will explain all.

7th. The only case that Shoay Gan ever gained was, by defendant's agent's own shewing, excluded from the agreement. It was finally won in appeal by Lenaine, and in the case before alluded to of Grasemann and Lenaine when the former had to pay the latter 29,500 Rupees on account of the former having purchased timber from Mounng Shoay Gan, the same timber which the Xiengmai Chief had confiscated and sold to Lenaine.

8th. What letter Chow Rajapoot has from the Deputy Commissioner Shoay Gan is of course ignorant. He has only to state that it was the Deputy Commissioner himself, in full Court, who returned him his 10 years' pass, and gave him a passport for Bangkok, where he knew he was proceeding by permission of the Commissioner to prosecute his present case. With reference to the last, to say the least, of unwarranted assertion of the defendant's pleader regarding the abandonment of Mhinekoongyee for timber operations of Shoay Gan, he has only to say that Shoay Gan doubtless was diffident in continuing operations of cutting and felling timber to be pounced upon by unscrupulous hawks, backed by men yielding absolute power.

I consider, I think I may fairly state, as I have now replied to the supplementary defence handed in by Defendant's agent, without taking advantage of the entire want of legal knowledge which has been displayed, as well as the clerical and grammatical errors which abound throughout the document, that I have now a right to claim that my time should be no further occupied by any more frivolous statements, and trust the Court will now proceed to decide on the various documentary and other evidence which will be produced.

(Signed.) R. C. BURN,  
*Agent for Shoay Gan.*

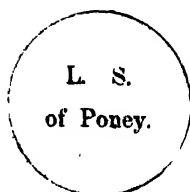
BANGKOK, }  
17th December 1863. }

### A 8 k.

CERTIFIED English translation of Proceedings of the Siamese Court, forwarded by the Siamese Government to H. B. M.'s Consulate.

The letter of Chow Rajapoot of Xiengmai, sent in friendship to Chow Luang of Maulmain and to Ayabeng, &c., and the authorities of Maulmain. The whole of the timber forest of Mei Yuom from the creek of Mei La Luanylong downwards to the mouth of the Mei Yuom, belong all to Chow Rajapoot.

Chow Rajapoot has made Mounng Shoay Gan to overlook, dooley, it, and to cut, and buy, and sell





teak timber to traders as Moung Shoay Gan pleases, and to allow any one to cut timber from the date 1220 to 1230. Within this period, any persons coming to cut timber in the forest are first to ask Moung Shoay Gan. If Moung Shoay Gan direct them to cut, they can do so ; but if Moung Shoay Gan should not direct them to cut, they cannot cut ; because Chow Rajapoot has given Moung Shoay Gan charge to overlook. If any Chow Nai Thow Khan, or any person, come to cut teak timber in the forest of Mei Yuom, they must first enquire of Moung Shoay Gan. Should they not enquire, they are to be forbidden to cut.

I, Sir Robert H. Schomburgh, Knight, Her Britannic Majesty's Consul to the kingdom of Siam, residing at Bangkok, do hereby certify that the foregoing is a true and correct copy of the original document in the archives of this Consulate, having been carefully examined and compared therewith.

In testimony whereof I do hereunto set my sign and seal, this 26th day of April, in the year of our Lord 1864.

(Signed) ROBERT H. SCHOMBURGH.

### A 8 1,

On Monday, the 7th March, the Court directed Chow Rajapoot to be sworn, and examined as follows :—

*By the Court.*—When Chow Rajapoot gave Moung Shoay Gan the letter, did Chow Rajapoot do so because Moung Shoay Gan had rented the forest entirely to cut timber for 10 years, or only authorised him to be overseer to allow other people to cut, and to collect the duties for Chow Rajapoot. ?

*Chow Rajapoot.*—I gave Moung Shoay Gan a letter which explains the matter. (The letter was produced and read by the Court, in the presence of Chow Rajapoot, who acknowledged that it was his letter.)

I, Sir Robert H. Schomburgh, Knight, Her Britannic Majesty's Consul for the kingdom of Siam, now residing in Bangkok, do hereby certify that the foregoing is a true and correct copy of the original record in the archives of this Consulate, having been carefully examined and compared therewith.

In testimony whereof I do hereunto set my hand and affix my seal of office, this 26th day of April, in the year of our Lord 1864.

(Signed) ROBERT H. SCHOMBURGH.



Approved by  
(Signed) KROM LUANG WONGSA

L. S.  
British  
Consul.

At Her Britannic Majesty's Consulate, Bangkok, this eighteenth day of April 1864, before me, Sir Robert H. Schomburgh, appeared Chow Kha Wilowoot Rat Suriwong, Prince of Chengmai, and set his mark to this document in attestation thereof, declaring that he fully understood the tenor of it.

(Signed) ROBERT H. SCHOMBURGH,  
*Her Majesty's Consul.*

#### A TRUE TRANSLATION.

CHOW KHA WILOWOOT RAT SURIWONG, Ruler of Chiengmai, gives this document to Captain Burn and Moung Shoay Gan, to state as to the forest of which Moung Shoay Gan is the overseer, according to an agreement with Chow Rajapoot, by which the forest is made over to him to superintend from the year Chula Sakarat 1220 to the year Chula Sakarat 1230, the Chief of Chiengmai will not take it away from him and give it to another in consideration that Captain Burn and Moung Shoay Gan have ceased the prosecution of their suit so far as it concerns him the Chief of Chiengmai, and have concluded all matters between them.

Written, Saturday the 10th of the waxing of the 5th of moon, year Choet Chosok (April 16th 1864.)

*A true Translation,*

(Signed) HY. ALLABASTER,  
*Acting Interpreter,*  
*H. B. M. Consul.*

This is to certify that the signature attached to the foregoing translation is that of the acting Interpreter of this Consulate.

(Signed) ROBERT H. SCHOMBURGH,  
*H. B. M. Consulate.*

H. B. M. Consulate,  
Bangkok, 26th April 1864.

L. S.  
British  
Consul.

#### A 8 n.

CHOW XIENGMAI states as follows in the matter of Moung Shoay Gan :—

Originally, Moung Shoay Gan was a person belonging to Maulmain, and came to live with Chow Rajapoot in Xiengmai. Chow Rajapoot gave Moung Shoay Gan a wife. Moung Shoay Gan lived a long time in Xiengmai. Chow Rajapoot placed confidence in him, and gave him elephants to assist him in cutting teak timber for sale in Muang Yuom. At that time, two Ngeins, husband and wife, came from Muang Yang Dong. Moung Shoay Gan, seeing the wife was handsome, loved her and conversed with her. That night Moung Shoay Gan procured some spirits, and gave the Ngein, and made him drunk. Moung Shoay Gan then killed him, and took his wife, who has lived with Moung Shoay Gan until the present day. When the Chow Muang Yang Dong knew that Moung Shoay Gan had killed the husband and taken the wife, Chow Muang Yang Dong sent people to



Chow Muang Yuom requesting the person of Moug Shoay Gan, and if Phya Khuam of Muang Yuom refused, Chow Muang Yang Dong would attack Muang Yuom. Moug Shoay Gan, being made aware of this, fled. Pyah Khuam could not therefore deliver up Moug Shoay Gan. The messengers of Chow Muang Yang Dong went away. At that time, Chow Boorakatan of Muang Xiengmai sent Phya Mongkhow of Muang Yuom, and Phya kumlee of Xiengmai to collect the money for timber cut at Mei yeh. The Yang Dong prevented them from doing so, until they should deliver up Moug Shoay Gan. Phya kumlee and Pyah Moug Khaw said they could not deliver him up, as Moug Shoay Gan was a Maulmain man. The Yang Dong became angry, and took a gun and shot Pyah Mongkhow of Muang Yuom dead. Phya kumlee and his servant fled to Muang Yuom. The Yang Dong brought an army and attacked Muang Yuom. Phya kumlee, Phya khuam of Muang Yuom, and Moug Shoay Gan assisted to fight the Yang Dong, but being unsuccessful, they fled. Moug Shoay Gan fled with the Ngien's wife by way of Phositau. On hearing that the Ngien people were attacking Muang Yuom, I collected people, and sent them for Moug Shoay Gan. My messengers went to Phositau, where they were informed that Moug Shoay Gan had fled across the river Mie yei min. My messengers then returned, and informed me that Moug Shoay Gan had fled. At the time Muang Yuom fell, the inhabitants lost 36 elephants. About 100 men and women and 16 "han" (villages or houses) were burnt, and money was taken away belonging to Kariengs more than 6,500 Rupees.

When I knew that Muang Yuom had fallen, I collected people, and went to Muang Yuom and fought one day, and the Yang Dong people fled. When Muang Yuom fell, the timber cut by traders in the forest of Muang Yuom was deserted by the owners for two years. Some of it was burnt, and some floated away, about 2,000 or 3,000 logs. The duty for cutting could not be got, because Moug Shoay Gan was the origin of trouble, which caused me and others to lose a great many benefits. After awhile, an Englishman, named Lenaine, came over to Xiengmai, and said to me that the teak logs that remained both near the water's edge and on land, the owners did not look after, and the duty for cutting the same could not be got, the rains would set in and cause a flood which would carry it all away. Lenaine begged to buy the timber at 10 Rupees per log from Muang Yuom southward. I sold it to Lenaine, and made an agreement with him that he was not to take away any timber that had an owner. This matter is explained in the said agreement. Then Lenaine went to Muang Yuom, and took the timber to Maulmain. Moug Shoay Gan and certain others, owners of timber, in all 11 persons, who were in Maulmain, said that Lenaine had taken their timber, so they complained against Lenaine. It was in the year Dog. I came to present myself to his Majesty at Bangkok, where I was informed that Mr. Lenaine had consented to pay Moug Shoay Gan and the other Burmese who had complained 47,000 Rupees, and that both parties had entered into an agreement that the matter was settled. Mr. Lenaine sent me the agreement.

### A 8 o.

THE letter of Chow Xiengmai to Phya Khuam of Muang Yuom.

As to what Mr. Lenaine informed Chow Xiengmai, Chow Xiengmai did not give any one permission to cut timber, or drag timber, to the banks of the Mei Yuom. From the south of Muang Yuom no one has paid any duties. Mr. Lenaine can have all the timber there.

Chow Xiengmai has given a letter to Mr. Lenaine.

Now, Mr. Lenaine has sent a letter by Koo Chune, saying Mr. Lenaine had gone, with Chow Xiengmai's order, to tell Phya Khuam. Phya Khuam would not respect Chow Xiengmai. Phya Khuam intrigued with Moug Shoay Gan, Moug Weng, Moug Oopay, Singsey, Moug Poh, Moug Yok.

Moung Kalay, Moung Khi, Moung Pho, Tho Yeh, and Thi long Poh, eleven men, and would not deliver the timber to Mr. Lenaine.

Chow Xiengmai, therefore, sends a letter to Phya Khuen to know what object he had in not delivering the timber to Mr. Lenaine. Chow Xiengmai would like to know when Thow Phomlahan, Thow Khamlee, and Thow Chainwong deliver this letter. Let Phya Khuen conduct Moung Shoay Gan and Moung Weng to Chow Xiengmai without delay.

### A 8 p.

THE Court enquired of Chow Xiengmai and Chow Rajapoot the following:—

How many years Moung Shoay Gan had been at Xiengmai ?

When Moung Shoay Gan came from Maulmain to live in Xiengmai, had he a passport ?

Chow Xiengmai replied :—When Moung Shoay Gan came to Xiengmai, Chow Rajapoot was in the priesthood. I knew that Moung Shoay Gan had escaped from prison in Maulmain, and went to Martaban, after which he went to Xiengmai in the time of the Chow Xiengmai Pattawong.

At that time, Chow Mahawong, the father of Chow Rajapoot, was the Uperat. Moung Shoay Gan had no passport.

Moung Shoay Gan lived in Xiengmai with the Uperat over 20 years.

When Chow Rajapoot left the priesthood, he gave Moung Shoay Gan a wife, and employed him in various ways, which enabled Moung Shoay Gan to make some money. Moung Shoay Gan's parents then came to live at Xiengmai with him.

Chow Xiengmai Pattawong died, and the Uperat Mahawong became Chow Xiengmai. Chow Xiengmai Mahawong sent letters three times to the Commissioner of Maulmain requesting that Moung Shoay Gan might be permitted to go and come to and from Maulmain. The Commissioner would not consent.

When the new Commissioner was appointed, Chow Xiengmai Mahawong sent another letter requesting that Moung Shoay Gan might be permitted to go and come to and from Maulmain.

The new Commissioner consented, and Moung Shoay Gan was thus enabled to travel to Maulmain and back until the present time.

### A 8 q.

#### B.

WEDNESDAY 3, waxing Katsone, year 1221.

The owner of the Golden Palace of Chiengmai do sell the whole of the timber which was cut, dragged, &c., by the Thitongs (foresters) along the banks of Minelonghee and up to the Thongheen, the 11 Thitongs, viz : Moung Shoay Gan, Moung Wine, Moung Oopay, Ko Bouk, Shoay Thay, Nga Kee, Moungaleai, Moung Youk, Nga Oung Phan, Nga San Nay, and Tee Sen Pan have been felling and dragging down timber without coming in to pay the duty and presents, and on account of their having failed to do so, the whole of the timber felled, dragged and kept by them on the banks, streams, and landing places are delivered over to Mr. Lenaine.

*True Copy,*

E. B. SLADEN,  
Assistant Commissioner, 1st. Class.

## A 8 r.

IN THE COURT OF HIS ROYAL HIGHNESS PRINCE  
KROM HLUANG WONGSA, SIAM.MOUNG SHOAY GAN *versus* CHIEF OF ZIENGMAI.

DEFENDENT's rejoinder to Plaintiff's reply of 17th instant in the above case shall be as brief as possible, nothing in it requiring special notice beyond certain minor evidence here afforded of the substantial correctness of the Chief's defence. 1st para, disputing the power of Defendant within his own jurisdiction, must be left to the Court for decision, and in arriving at which conclusion it need not be apprehensive of the British Government encouraging any attempt of the present nefarious character, however ready it always is to uphold the just claims of its subjects. (2nd para) Lenaine bought out absolutely all claims on the wood now litigated, hence no claim can be made a second time.

3rd Para. Chow Rajapoot being present, can explain the real nature of the letter in question, and only regret that he did not bring Moungh Shoay Gan's letter (applying for it) with him from Ziangmai, as it is still in his possession there, and would at once settle the point by proving that the duty had never been paid.

4th Para is utterly erroneous, as it is proved further on in the same document that the very logs for which each sum was paid by either Grasemann & Co., or A. Lenaine to Shoay Gan, were part and parcel of the entire number now sued for collectively, and that, therefore, all sums so received are correctly entered in Defendant's favor.

The remaining paras under reply fully prove the payments in question leaving the allusion to Grasemann & Co.'s repayment of any sum quite irrelevant to this case, as that is a matter purely between himself and Lenaine, Shoay Gan having received the money, and being hardly likely ever to repay it.

In conclusion, as it is the Defendant's wish, as much as any one else's, that this case should be brought to an early issue, no unnecessary time need be wasted by further statements and translation, and Defendant will therefore confide his interests to the clear judgment and good sense of the Court, fully believing that he has clearly proved his right to act as he did. He can with confidence rely upon a verdict in his favor.

(Signed) C. O. JOHNSTONE,  
*Pleader for Defendant.*

B A N G K O K, }  
The 19th December 1863. }

## A 8 s.

CHOW KAWILOROT PHARA CHOW XEINGMAI begs to add to his statement already sent in to the Court.

Moung Shoay Gan, the Plaintiff, has been a very wicked person. When he was in Muang Yuom, a Ngien man and his wife went to live at Moung Shoay Gan's house. The wife of the Ngien man being very handsome, Moung Shoay Gan told the husband that in that country there was a superstition about allowing a husband and wife to remain together in any house where they have come to remain temporarily.

Moung Shoay Gan sent the Ngien's wife into his room along with his wife. When the husband came after his wife into Moung Shoay Gan's house, the latter and his friends got up a quarrel with the Ngien and killed him.

Moung Shoay Gan took the Ngien's wife to himself, as I have already stated in my other declaration.

Many of the people of Xiengmai, Na khow Samphin, and Maulmain, are aware of this, and that MOUNG SHOAY GAN was the cause of the Ngien's of Yangdong coming to attack MUANG YUOM, and destroying the benefits of the prince rulers, inhabitants, and traders of Xiengmai, and his tributaries.

## A 9.

LETTER from the Deputy Commissioner at Maulmain, to the Chief of Zimmay.

I, Major J. P. Briggs, Deputy Commissioner at Maulmain, beg to inform Zimmay Shoay-Nan-Skin regarding the business of Chow Rajapoot, MOUNG SHOAY GAN, and MOUNG NINE, as contained in your letter.

In consequence of the friendship between the two countries I propose doing justice.

I have ordered MOUNG NINE and MOUNG SHOAY GAN to appear before me, and took their statements in presence of Tanpah and Tankam.

Copies of their statements are herewith forwarded by Tankam and Tanpah for the perusal of Chow Rajapoot.

I have fed Tankam, Tanpah and their people, and gave them sufficient money to live upon.

The letter you wish to have from MOUNG SHOAY GAN at present is not in Maulmain, but has been sent to the Court of Bengal—as soon as that letter is returned, I will lose no time but will immediately forward it to you.

MAULMAIN,  
3rd November 1862. }

## A 10.

THE Viceroy of Zimmai writes this for the information of the Commissioner, the Deputy Commissioner (the Ayabine Meng) the Wondouk Meng, and other officers of the Courts at Maulmain.

The Timber Forests extending from the mouth of the Mhine-longyee Creek, as far as the town of Mhinelongyee, belongs to Tsaw Maha Bong Meng.

The Timber Forests extending from the Town or Mhinelongyee as far as Mai lah bong, belongs to Tsaw Lah Kyapoot Meng.

And the Timber Forests extending from Mai lah bong as far as the source of the Mhinelongyee Creek, belongs to Tsaw Maha htit Meng.

Each of the aforesaid mungs collects and receives duties on the timber produced from their respective forests. The two forests belonging to the two of the abovenamed officers, Tsaw Maha Bong Meng and Tsaw Maha htit Meng, were not given to MOUNG SHOAY GAN. But Tsaw Lah Kyapoot Meng only gave MOUNG SHOAY GAN a permit (or order) to work out timber in the forest belonging to him (the said Meng) from the year 1220 (A. D. 1858) to the year

1230 (A. D. 1868) Mounḡ Shoay Gan after having received the permit (or order) did not work out the timber, but returned to Maulmain; and as Mounḡ Shoay Gan did not pay duty for one or two years, the said Tsaw Lah Kyapoot Meng sent some Thit Gongs and his men to the Authorities at Maulmain, to take back from Mounḡ Shoay Gan (or to cause to cancel) the permit (or order) that was originally granted to him. After which, when Mounḡ Shoay Gan and Captain Burn presented a petition to His Majesty of Bangkok, with a view that the forest permit might be given back to them (or renewed), a compromise, agreement, was made that the matter should cease, and that nothing more should be said on the subject. We, the Viceroy of Zimmai, at that time were in the city of Bangkok, and on Mounḡ Shoay Gan and Captain's petitioning to us, we said that on our arrival at our own city of Zimmai, Mounḡ Shoay Gan and Captain should return to us the permit granted by Tsaw Lah Kyapoot Meng, and promised that, after this, we might give them a new permit to work out timber in the forest if we saw fit to do so. We then waited for Mounḡ Shoay Gan and Captain Burn for more than a year, but they did not come. When this time elapsed, Mounḡ Shoay Gan and Captain Burn, with a large number of men, arrived with muskets, cannons, and other weapons, came in and forcibly supermarked all timber that had been previously worked out by Karen and Kyeen Thit Gongs and other residents of the place. They, moreover, took possession of two elephants belonging to us from the hands of Mounḡ Nine, and thirteen elephants belonging to several poor Thit Gongs. They also burnt great many logs of timber worked out and obtained by the Thit Gong, Mounḡ Nine. Therefore, when these poor people reported the matter to us, we despatched a Letter of Friendship to our friends the Authorities at Maulmain, for their information, and then sent for Mounḡ Shoay Gan and Captain Burn to enquire into the matter. But they refused to obey our summons. Mounḡ Shoay Gan and Captain Burn, after taking possession of the 13 elephants returned to Maulmain, and when we sent our Thit Gongs and servants after them, a fight between both parties ensued, and consequently some men on each side died from the effects of the wounds received in the affray. The poor inhabitants of the town and villages were alarmed and ran and hid themselves. Therefore (?) we lost large sums of money on account of timber duties. If the owners of the elephants and timber which have been forcibly taken possession of by Mounḡ Shoay Gan and Captain Burn should petition (or apply for their recovery) to the Authorities at Maulmain, we beg to request that the Commissioner and the Deputy Commissioner will do justice towards these poor people, and demand their claims from Mounḡ Shoay Gan and Captain Burn for them.

We beg further to state that although Tsaw Lah Kyapoot Meng had repeatedly asked to return to him the Forest permit (or order) originally granted by him, Mounḡ Shoay Gan and Captain Burn would not give up, but sold it to Mr. Lenaine. Mr. Lenaine then sold it to Mr. Snadden, who again sold it to Mr. Johnstone. If these three parties should come up to Mhinelongyee to work out the timber in the forest, we, the Viceroy of Zimmai, would not allow

them, but should prevent them from doing so; as the said Mhine-loongyee Forest is within our territory, and belongs to us.

The forest granted to Moungh Shoay Gan and Captain Burn by Tsaw Lah Kyapoot Meng did not belong to him (the said Meng) but it belongs to us, the Viceroy of Zimmai. If on our preventing Messrs. Lenaine, Snadden and Johnstone, these persons should apply for permission to carry muskets, cannons, and other weapons, and to come into Mhine-loongyee, we beg to request that the Authorities at Maulmain would not permit them.

Lastly, we beg here to request our friends, the Commissioner and the Deputy Commissioner, that the five (5) persons, Nga Dhamma, Nga Dee Pah, Nga Tsa lah, Moungh Shwing and Nga moo—who attacked and plundered the Thit Gong, Nga Pannee, and who are now concealing themselves in the village of Pahpoo in the British territory, will be apprehended and executed.

B. Y. 1227, on the 11th day of the waxing of the moon Taboung, corresponding to the 11th day of March, 1866.

Translated from the Siamese into Burmese, by

(Signed) KO KIN.

The originally Siamese being read and explained by

(Signed) NGA NWAI.

(True copy)

(Signed) D. BROWN, Lieut.-Col.,  
Offg. Commissioner, T. D.

(True translation from the Burmese)

STEPHEN MCKERTICH,  
Translator.

Maulmain, 17th April, 1866.

## A. 11.

THE Chief of Zimmai sends this to the Commissioner, the Deputy Commissioner, and other officers of the Courts at Maulmain, for their information.

That several Thit Goungs from Maulmain having applied to us for permission to work out timber in the forest of Mhine-loongyee, we allowed them. These Thit Goungs have paid to us timber duty on all logs that they have cut and worked out, from the 3rd day of the waning of the moon Wah Goung (corresponding to the 20th day of August 1864) B. Y. 1226. According to the names entered in the list below, we have also given to every one of them a receipt for duty and an order to mark their respective timber. In our former letter we requested that these men might not be in any way obstructed or molested, but be permitted to dispose of their timber in whichever manner they please, on their arrival at Maulmain.

The receipts for duty issued to each of these Thit Goungs were bona fide documents, and they bore a seal like the one below. In Zimmai, there is not another seal similar to this one.

Dated the 4th day of waxing of the moon Ta Boung, B. Y. 1227.  
(corresponding to the 17th day of February 1866.)

NAMES OF THIT GOUNGS.	NUMBER OF LOGS.	AMOUNT OF DUTY PAID.		
Moung Bike ... ..	936	4212	"	"
Moung Khine ... ..	609	2740	8	"
Moung Aik Pareen ... ..	900	4050	"	"
Moung Mat Doot ... ..	236	1062	"	"
Moung Koon Htaw ... ..	400	1800	"	"
Moung Mhone ... ..	223	1003	8	"
Moung Eng Gah ... ..	251	1129	8	"
Moung Shoay Baw ... ..	411	1849	8	"
Moung Mhoay ... ..	427	1921	8	"
Moung Shoay Hlah ... ..	232	1044	"	"
Moung Thoon Tha ... ..	222	999	"	"
Moung Yan Shin ... ..	126	567	"	"
Moung Yan Kin ... ..	715	3217	8	"
Moung Gyee ... ..	800	3600	"	"
Moung Thoon Tha ... ..	455	2047	8	"
Total...	6943	31243	8	"

Note. Rupees 31,234-8 in the Burmese Copy.

## A 12.

THE Viceroy of Zimmai has to inform the Commissioner, the Deputy Commissioner, and the Woondouk-meng of Maulmain :—

That Moung Shoay Gan and Captain Burn, with arms and ammunition, came into Mhine-loon-gyee, and made a halt, where several Burmese Thit-goungs were cutting and working out timber within our territory, and dragging them to the river's edge. Duty on some of them has been paid.

That Moung Shoay Gan and Captain Burn, forcibly marked those logs, and acted as they pleased. Did the Authorities at Maulmain give Moung Shoay Gan and Captain Burn written orders, allowing them to stay at Mhine-loon-gyee, and to mark all timber belonging to other Thit Goungs, as if our towns and villages are not under the protection of rulers? If no such orders were given them, we do not desire them to remain a single day within our territory, but wish them to be called back immediately.

That if they are not re-called, and if any calamity (or accident) happen to them, we request that the Authorities at Zimmai may be freed from all blame being attached to them. We request that this letter will be forwarded to the Chief Commissioner at Rangoon, by the Authorities at Maulmain.

B. Y. 1227, the 10th day of the waning of the moon Tagoo (April 20th, 1865.)

*Translated from the Siamese into Burmese by*

(Signed) MOUNG NHINE.

*(A True Translation from the Burmese.)*

STEPHEN M. MCKERTICH.

September 19th, 1865.

## A 13.

THE Viceroy of Zimmai sends this to the Commissioner, the Deputy Commissioner (A-ya-bine meng) the Woondouk meng, and other Officers of the Courts at Maulmain, for their information.

Captain Burn and Moungh Shoay Gan, armed with firearms, cannons, muskets, dahs and spears, are now making their residence in Mhine-loon-gyee, where, having marked and taken possession of the timber worked by the Burmese Thit Goungs (some of whom have paid duty, and some have not), they, like robbers and dacoits, attacked and plundered several Thit Goungs, and burnt their tais (houses) and timber. They also took possession of their property, including elephants, and caused losses to the Thit-Goungs to great extent. Shoay Gan and Captain Burn sent written orders to the Kareens, desiring them to send (or provide) them with all elephants and horses that might be found in any village. The company of Thit-goungs are now divided and scattered—some having fled to Zimmai, and some to Maulmain. Shoay Gan is now at Mhine-loon-gyee; and Captain Burn has come into Zimmai, where on his arrival, he accounted himself in firearms, and with a number of followers, entered into our presence. He then went about the town with his men, who were armed with muskets, daggers, and spears. He brought a letter which he held in his hands and shewed to us, saying "Governor of Zimmai! If you will not act according to this letter, I shall do as I think fit." Whether such acts of Captain Burn are proper, the Authorities at Maulmain will please to consider and decide. Captain Burn and Shoay Gan did not show us the letter of Chow Rajapoot, and we did not receive any new order. After having forcibly marked and taken possession of the timber from the Burmese Thit-goungs, Shoay Gan and Captain Burn said that they would pay duty on those logs, but on our refusal to receive it, Captain Burn said he would go down to Bangkok, and pay it there. The persons who worked at the timber, and those who marked and took them, are both belonging to Maulmain; and therefore we send this Letter of Friendship to you, the Commissioner, the Deputy Commissioner, (Aya-bine-meng) the Woondouk-meng, and other Officers of the courts at Maulmain,—hoping that they will send us, through the hands of Moungh Att, who bears this letter, a quick reply to make the "bad good" (to mend all matters) and to preserve perpetual friendship.

B. Y. 1227, the 3rd day of the waning of the moon Ka-seng (May 12th, 1865).

Captain Burn brought to us a letter. The letter which we now address is one of friendship. Whether the aforesaid letter (the one brought by Captain Burn) was also a letter of friendship you will be pleased to say in your reply, and send it by the hands (or to the hands) of Thouk-khau.

*Translated from the Siamese into Burmese by* NGA-PAIN,

*(A True Copy)*

(Signed) NGA MOUNG.

*A True Translation from the Burmese,*

STEPHEN M. MCKERTICH.

August 30th, 1865.



## A 13 a.

(Signed) A. FITCH, Colonel,

*Commissioner, Tenasserim Division, B. B.*

THE Commissioner who rules over the country of Tenasserim sends this Letter of Friendship to the Viceroy of Zimmai, to inform him, that the terms of the Agreement executed and delivered at Bangkok in the presence of the A-ya-daw-bine-meng, the agent to Her Majesty the Queen, should be abided by. The agreement and the orders are filed in the Courts at Maulmain, and contents of which are known to us. Mr. Johnstone and Mr. Snadden having of their own accord sold the Mhine-loon-gyee forests to Captain Burn and Mounng Shoay Gan on a written agreement, I have to request that you will give up and deliver to Captain Burn and Mounng Shoay Gan, the Forests, elephants, horses and timber, with all property belonging to Messrs Johnstone and Snadden ; so that, according to our terms of friendship, there may be no disputes in future in regard to the forests.

Written in B. Y. 1226, on the 2nd day of the waxing of the Moon Ta-boi-dwai. (January 28th, 1865.)

*A True Translation from Burmese.)*

STEPHEN M. MCKERTICH.

August 30th, 1865.

## A 14.

THE Viceroy of Zimmai sends this Letter of Friendship to the Commissioner, the Deputy Commissioner (A-ya-bine-meng) the Woon-douk-meng and other Officers of the Court at Maulmain, for their information.

The Burmese and Kareen Thit Gongs of Maulmain and the Kareen Thit Gongs of Zimmai having applied to us for permission to cut and work the timber in the Mai-zoung and Mai-lah Forests, we permitted them. They worked and removed some of the timber, but some of them remained in the forests. Captain Burn and Mounng Shoay Gan of Maulmain came to Mhineloongyee and acted towards several of these Burmese and Kareen Thit Gongs in a lawless manner, and dispossessed them of their logs of timber—which they had cut, and for which they had paid duty—as if the country was without a Ruler. Therefore we address this Letter of Friendship to you—the Commissioner, the Deputy Commissioner, the Woon-douk-meng, of Maulmain, and the Chief Commissioner of Rangoon, to express our grief at being thus treated (or insulted) When we went down to Bangkok with Captain Burn and Mounng Shoay Gan, and talked about the forest affairs, we did not give any orders. On their applying for a new permit (or order) we merely said that after our arrival at Zimmai, we might give it, if we thought proper after due consideration. After this, Captain Burn and Mounng Shoay Gan did not make their appearance before us. But at last, when they did come, they came like robbers [and dacoits,] attended with many followers, and armed with cannons and muskets, attacking the Thit-Gongs and taking possession of their timber. They also burnt the *Tai* (houses) of Mounng Gyee and many other Thit Gongs. The Burmese and

Kareen Thit Goungs are now taking down their timber, and we request that the Commissioner, (A ya bine meng) of Maulmain, will not allow them to be obstructed or molested by Captain Burn and Moung Shoay Gan, but permit them to sell their own property.

B. Y. 1227, the 9th day of the waxing of the Moon Wah (a syllable left out.)

*Translated from the Siamese into Burmese by MOUNG BAIN, and assisted by KAH NAN DAH, a Shan.*

(Signed,) MOUNG BAIN.

(Signed,) KHA NAN DAH.

*(A True Translation from the Burmese.)*

STEPHEN M. MCKERTICH,

August 30th 1865.

## A. 15.

### LETTER OF FRIENDSHIP.

No. 6 of 1865.

LIEUTENANT COLONEL DAVID BROWN, Commissioner of the Tenasserim and Martaban Provinces, sends this Letter of Friendship to the Viceroy of Zimmay, to inform him that,—We have received his letter to us, stating that Captain Burn and Moung Shoay Gan were disturbing and acting themselves like thieves and robbers within the territory of the Viceroy, and requesting us to consider whether these acts were proper or not.

Captain Burn trades like all other merchants, and if any merchant acts lawlessly within the Viceroy's territory, the Viceroy shall (or ought to) punish him according to the custom of the law. But Captain Burn is a British merchant; and if he and Moung Shoay Gan had really acted forcibly and lawlessly, there is, at Bangkok, an Agent appointed by the English Government for the purpose of deciding or settling affairs, according to the second article of the Treaty formed between Her Majesty, the Queen of Great Britain and His Majesty, the King of Bangkok—in matters where a British subject shall forcibly or lawlessly act in Zimmay.

If Captain Burn and Moung Shoay Gan had unlawfully acted within the territory of Zimmay, they should be reported to Her Majesty's Agent (Aya bine Meng) at Bangkok, who will settle the matter according to law.

With regard to the Commissioner's (former) Letter of Friendship to the Viceroy, it was not sent (or written) according to the wishes of (or to please) Captain Burn, but only to inform him of his (Captain Burn's) arrangements with Messrs. Johnstone and Snadden, and to avoid confusion between them.

This Letter of Friendship is, therefore, sent to the Viceroy of Zimmay, to inform him of all the circumstances.

June 13th 1865.

*(A True Translation from Burmese.)*

STEPHEN M. MCKERTICH.

September 5th 1865.

**A. 16.**

(Signed) **A. FYTCHER**, Colonel,  
*Commissioner, Tenasserim Division, B. B.*

THE Commissioner who rules over the country of Tenasserim sends this letter of Friendship to the Viceroy of Zimmay, to inform him, that the terms of the agreement executed and delivered at Bangkok, in the presence of the A-ya-dow-bine-meng, the agent to Her Majesty the Queen, should be abided by. The agreement and the orders are now filed in the Courts at Maulmain, and contents of which are known to us. Mr. Johnson and Mr. Snadden having of their own accord sold the Mhyneloongyee Forests to Captain Burn and Mounng Shoay Gan, on a written agreement, I have to request that you will give up and deliver to Captain Burn and Mounng Shoay Gan, the forests, elephants, horses, and timbers, with all property belonging to Messrs. Johnson and Snadden; so that, according to our terms of friendship, there may be no disputes in future in regard to the forests.

Written in B. Y. 1226, on the 2nd day of the waxing of the Moon Ta-boi-dwai- (January 28th 1865.)

(A true translation from Burmese.)

STEPHEN M. MCKERTICH,  
August 30th, 1865.

**A. 17.**

IN THE COURT OF THE COMMISSIONER, TENASSERIM  
DIVISION OF BRITISH BURMAH.

The petition of the undermentio-  
ned Foresters, residents of Maul-  
main.

RESPECTFULLY SHEWETH—

That your petitioners have, with the permission of the Zimmay authorities, cut dragged and paid duty on large quantities of timber in the Mhyneloongyee forests, which they are now about to bring into British jurisdiction.

That your petitioners have heard with alarm that Mr. R. C. Burn is proceeding to the Mhyneloongyee forests, accompanied by some fifty or sixty followers, armed with double barrel guns, and with the avowed intention of marking every log of timber belonging to your petitioners and others, and of forcibly taking possession of your petitioners' property.

Your petitioners are British subjects, and ask the protection of the Government from such lawless acts, as Mr. R. C. Burn openly avows he is going to commit, and they submit that his followers should be deprived of their arms; or the result will be more serious than may at present be anticipated.

Petitioners are prepared to give evidence of Mr. Burn's having the said armed followers, and of his avowed intention to seize their property,

And your petitioners as in duty  
Maulmain, 31st January, 1865. bound will ever pray

No. 25 of 1865.

Petition in original to be forwarded to the Deputy Commissioner

Amherst district for report, as to what Pass or Passes have been given to Mr. Burn for arms. Petition to be returned with report.

A. FYTCHE, Colonel,  
Commr. T. D. B. B.

Commissioner's Court, T. D. of B. B.

M a u l m a i n.

The 31st January 1865.

CRIMINAL MIS. NO. 19 OF 1865.

From enquiry in the office, I have ascertained that no Pass has been given to Mr. Burn for arms, by the Deputy Commissioner, and none by the undersigned on his behalf.

GEO. EYRE BARR,  
31st January, 1865.

MEMO No. 26.

From documents that have been produced before the court, it appears that the disputes between Messrs Snadden, Lenaine, Johnson, and Shoay Gan and Captain Burn, regarding their rights to timber in the Mhineloongyee forests, have been amicably adjusted, and that Captain Burn has proceeded to work the forests.

Mr. Snadden appears this day, and petitions that a Pass be granted to Captain Burn's party for thirty five arms (fowling pieces and muskets); that the party has a very large amount of property with them in cash and Merchandize, and as the party will have to be broken up into four or five separate parties, in order to work the different divisions of the forests, that fire arms are required to protect them from dacoits and wild animals.

I do not consider, under the circumstances of the case, that the quantity of arms for which a Pass is required excessive. It has been the custom invariably to grant Passes for firearms to foresters and others proceeding to cut timber, or carrying money for the purchase of timber, either on this or the Siamese side of the frontier, to protect them from dacoits and wild beasts: and muskets have been occasionally lent to Government for that purpose. There is no reason that this practise should be departed from in this instance.

What the petitioners state their suppositions to be regarding Captain Burn being about to take forcible possession of their property and that Captain Burn should be deprived of his arms, the court cannot listen to. As British subjects Captain Burn and his party are responsible to Government for any unlawful act they may commit in a foreign state, and will be held responsible for such.

Instructions will be issued to the Deputy Commissioner, Amherst District, to furnish the Pass for which Mr. Snadden petitions, and Mr. Snadden will be informed that the parties who have these firearms should be cautioned against making any improper use of them, and that they will be held personally responsible for any abuse of the Pass.

The petition, with orders passed upon it, will be forwarded to the Chief Commissioner, British Burmah, for information, and with a request that it may be returned to this Court for record.

A. FYTCHE, Colonel,  
Commissioner T. D. B. B.

Maulmain, February 1st, 1865.

The Chief Commissioner has perused the petition and the order thereon of the Commissioner of Tenasserim. The order is quite proper.

A. P. PHAYRE,  
Chief Commissioner.

Rangoon, 7th February, 1865.

DOCKET No.  $\frac{T}{175}$  DATED 9th February, 1865.

Returns Tenasserim Commissioner's Memo, No. 26 of 1st instant, regarding a pass, for Firearms granted to Mr. Snadden with the Chief Commissioner's approval enfaced.

H. NELSON DAVIES,  
Secretary.

W. H. C. (1.)

Maulmain, 24th June 1865.

RICHARD SNADDEN, Esquire,  
Messrs. R. & W. Snadden,  
Maulmain.

Sir,

There are three logs of Mhineloongyee timber lying on your ground at the Timber Depot at Kadoe :--

1 log is marked

| ၄၄

2 logs are „

၁၆၆၆

These logs belong to us. We purchased them from Nga Tha Dway and Kho Khine and Nga Eaik Pein, who are the registered owners of the marks, and who own the permit to work in the forests whence they were brought, as well as receipts for duty paid upon them to the Shan Government.

Since reporting the arrival of these logs at Kadoe, on the 19th instant, we have been informed that you did the same on the 21st idem with the intention of taking out Certificates for them as your property.

The logs are also marked M ငါ့ but these have been hammered upon them without the knowledge or consent of the foresters from whom we purchased the logs, or the Shan authorities from whom they obtained them.

We are debarred from taking out Certificates for these logs in consequence of their being at your depot, and your having also laid claim to them.

Having acquainted you with these facts, we have to request that you will authorize delivery of the logs in question to be made to us by an order to your Watchman at Kadoe, or failing this that you will be so good as to state what your reasons are for retaining possession of our property, and attempting to register it at the Forest Office as your own.

We are, Sir,

Yours faithfully,

TODD, FINDLAY & Co.

Maulmain, 27th June, 1865.

ABSTRACT FROM THE TIMBER ARRIVAL REGISTER.

MEMO Showing the number of Mhine-loon-gyae Teak Timber entered at the Timber Revenue Office Kadoe by Mr. Snadden as Agent for R. C. Burn.

[illegible]

1865.	139	143	72	19	37	5	3	62	57		53	45	21		107		72	105	38	23	3	41010
Sept.	26	30	37	18	4		22	8			26	14	7		31		13	33	7			
"	27	18	28	5	11		13	13			12	3	1		14		8	30	14	1		1
"	28	26	28	6			8	7			14	14	4		27		15	19	8	2		
"	29	30	18	33	8	1	24	6			14	14					8	37	10	4		1
October.	30	27	22	12	2	3		12	10		8	6	1		19		8	15	6	2		
"	31	8																				
"	17	23	44	10	8	22	2	28	13		20	7	5		33		14	35	14	3	1	
"	18	20	33	62	18	12	27	36	11		23	11	6		34		14	45	22	4		
"	19	20	30																			
"	21	40	20	4	2	10	1	9	1		12	8	5		17		13	14	7	2	4	
"	22																					
"	23	6	12	1	1	2	1	5	3		10	2	3		4		1	7	3	1	1	
Novr.	24	4	8	2	1		6	1			2	2			2		5	3	1	2		
"	25	1	3	2	1			1					1		2			3	2	1		
"	26	1	1												1			3	2	1		
Decr.	27	7																				
1866.																						
January.	3																					
	371	401	103	66	127	11	3	227	131	4	180	110	54		231	5	163	348	126	152	11	102794

KADOK,

The 14th August, 1866.

M. J. SLYM,  
Assistant Conservator of Forests,  
In charge Timber Revenue Station.

Note—The Burmese marks in each of the above columns have been omitted, as it would take a great deal of time to represent accurately the fantastic shapes adopted.

ABSTRACT FROM THE TIMBER ARRIVAL REGISTER.

**MEMO Showing the Number of Logs of Mhine-lon-ghée Teak Timber entered at the Timber Revenue Office Kadoc by Mr. R. Snadden.**

[illegible]

K A D D E,

The 14th August, 1866.

**M. J. SLYM,**  
*Assistant Conservator of Forests,*  
*In charge Timber Revenue Station.*



O. O.

R. SNADDEN, Esquire, '

Messrs. R. & W. Snadden,  
*Maulmann.*

Dear Sir,

Not having received any reply from you to our letter to your address, dated the 24th instant, we have now to inform you that we will hold you responsible for the value of the timber therein referred to, should you appropriate it in any way contrary to our instructions or wishes. As you have not yet acceded to our request, we have also to inform you that we shall hold you responsible for the loss of the timber should that happen from any cause.

We are, Dear Sir,

Your obedient Servants,  
TODD, FINDLAY & Co.

N. N.

IN THE COURT OF HIS ROYAL HIGHNESS PRINCE KROM  
HLUANG WONGSA DHIRAJ SNIDH.

At Old Royal Palace, Bangkok.

Cases of Mounq Shway Gan vs. Chief of Chiengmai, Mounq Oo-pay vs. Chiengmai.

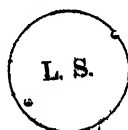
With reference to the above cases recently adjudicated in this the Principal Court of Siam, it is hereby declared for general information that the verdict was in both instances recorded in favor of Defendant (the Chief) no claim being considered to exist to either the money or the forest sued for, both these decisions were approved and confirmed by His Majesty the First King of Siam.

As the Siamese Government are aware that the Chief in question has given to Mr. Johnstone certain permits for the forest in question together with other districts, they have cautioned him against making any of them over to any third party, and should it hereafter appear that he has done so such an arrangement cannot be recognized, it having been made without either the knowledge or sanction of this Government.

It is further certified that all the within copies of documents connected with these cases are complete and correct.

KROM HLUANG WOONGSA.

Old Royal Palace, ' }  
Bangkok,  
The 6th May, 1864. }



## N N N.

*Mhineeloongyee, 21st November 1865.*

MY DEAR MALING,

I received your letter and the hair tonic at Kaukleet, but the bearer was the gong, so I sent no answer. If Shoay Gan only stays quiet at Yanbine, I think he is safe enough from a subpoena, but why he is hard up for elephants I don't know. He has 3 of M. Youk's. Surely that is enough for his lordship to travel, seeing that Europeans can do with one.

I send by bearer a black box containing children's dresses, also a letter to Hobday. Please forward both as early as practicable: also a letter to Snadden. Please send me by bearer as much of the paddy money as you can, as I have only Rs. 1000 left, and  $\frac{1}{2}$  of that is in gold, which does not go down here very well. Let me have, therefore, what you can do without. As I suppose you have to buy rice, &c., keep enough for that.....

I got all the flint guns, &c., safe. A touk and some thitgongs had arrived from Zimnay in my absence, nominally to oung their timber, but I told the old Binya I would hold him and his village responsible, and would shoot any man I found giving a log. I also sent men, and boned 3 fine male elephants of Moung Eik Prain's, which I have safe now, and which caused great confusion. The touk was for attacking me at once, but the Binya would not give him men, which has caused a split, and the touk and some of the thitgong's men go to Zimnay to-day I hear to get men. If I only had more elephant men. I would have boned all their elephants, but I may yet get some more, though I have hardly men enough to look after my own when any one happens to be sick.

The Binya came and called on me, and asked me to give back the elephants—a fine joke—I referred him to Bangkok.

Send up these men as sharp as you can, and all men who come with letters or things for me also. There will I hope be 4 men with letters from town arrive at Yanbine. I sent them by Pahi soon some time back. Send up that volume of Burn's poems please.

Yours sincerely,

F. N. BURN.

I don't want more hair tonic.

Please send up all elephant skins for new elephants.

## O O O.

*Mhineeloongyee, 7th October, 1865.*

MY DEAR MALING,

I received all the letters and papers by Fuzzul and Ramut Ali. Many thanks for despatching them. Do not send any men up here that you do not think deserve to be paid, and if you catch any fellow stealing, the best thing would be to give him a dozen, and kick him out. I paid up the fellows I have partly to save their high wages for doing nothing, and partly as a reward for not leaving the Choung Wah with the havildar and Syrang.

Asdur Ally tells me a gun was boned from him by the Shoay Oon police, but that he had told you, and you were going to get it back, which I hope you have done, Asdur Ally asks me to ask you to send up his things which Unsoor Ally has. Unsoor Ally writes he wants to go to his country. He had better stop on tell him till my brother comes up, which I fancy will be in 6 or 8 weeks. He will be a good fellow for you to have, but if you dont want him, send him up, and I'll pay him up.

\* \* \* \* \*

Every thing seems to be going on well in town for our case. There is no news here. The water is still high. Shoay Bo says he will have finished ounging above the town in 5 days, and then there will be 600 logs of our marks below this, and which he will go on ounging, and get out before December I hope.....

Yours sincerely,  
F. N. BURN.

Tha Oo, a Karen, with 1 elephant, and Ko Boir, with 4 elephants, I have given an order to cut below the Paik. So, that I hope we may get another 300 logs out this year. There is about that quantity I hear in Meelamoo, and below the Paik killed.

All the Thengan timber has escaped us. I tried to send there, but the water was too high, and I hear 500 logs have reached Kyodan without our marks, thanks to Shoay Gan's infernal laziness when he was here with his 30 "gentlemen," who he said were not coolies.

I have written to Snadden by Pahpoon.

P P P.

*Mhineeloongyee, 25th July, 1865.*

MY DEAR MALING,

As I expected, I find my brother very seedy here when I arrived, and it is such a beastly hole for procuring anything, fruit or vegetables, I am very glad I pushed on and came as quick as I did, as I have a few tins of soup, and a little port wine and arrowroot, which with medicine I hope to get my brother on his legs again in a week. He is slightly better now. I have been here two days. I shall move him to the mouth when he gets a little stronger. I am very busy, as I have had to write to Macleod and Snadden, and have very little time as the elephant is ready to start. You and the 3 sailors my brother wishes to go to Yanbine, and to help in the catching of the timber. It is there that you can serve us well as you know. We wish to be in possession of all logs bearing our marks. You can keep good friends too with Johnstone the Inspector, or whoever may be sent in his room, and even the sergeant under Johnstone might do us a good turn. Caution the sailors to avoid a row on the logs if possible, unless there are no witnesses, when they may maul any one who attempts to touch a log of ours.

Write to us frequently, and give us all the news you can. The 3 boxes of cash make over to Co Shoay Bo for whom I enclose a

Burmese letter, and start as soon as you can for Yanbine, as the timber will be arriving daily. Keep all the men at Choung Wah. We shall be there soon I hope, and we can then pay off a lot who want to go. The Shans send to Yanbine with the bullocks, and let them eat up that paddy. I think I have told you all I want done, and meanwhile hoping you are all serene.

I remain, my dear Maling,

Yours truly,

FRED. N. BURN.

**R R R.**

*Mhineloongyee, 9th August, 1865.*

MY DEAR MALING,

I got your letter of 18th July and 3 *Observers* on the 6th. I am glad you take care of the elephants, but men must be taken care of too, and especially my brother and myself, so send up all elephants that have not sore backs the day after they arrive, and we will rest them here. Potter was 4 nights from the M. C. Wah with empty elephants. I was 3 only with my 2 elephants crammed.....S. Bo is not at fault with the skins. If he has to work all elephants he must divide the skins. We buy all we can here, but there are very few for sale. When those from town arrive we shall be in a better way. S. Bo has oughed the Melamoo timber, 196 logs with only our marks. Skin is seedy, and in Bo's absence I have no doubt lots of the skins got wet and rotten, as the natives are so beastly careless.

My brother thinks Meebong is the place for you and the sailors, as there is where the row will be in rafting the logs. He was sorry you waited for arrival of a boat from Maulmain, M. Mhat has a boat. Could you not have borrowed his? Very little timber is going out now, and very little rain falls here. That mark F must have been put on in British jurisdiction, as there is no such mark in Mhineloongyee. If you could bone any one with it, it would be very fine, as Todd F. & Co. are responsible for whoever may have their marks. However if we get possession, I don't think their mark on it matters much as long as ours is on.....I will send your things when I go to the C. Wah, but I can't have my brother yet, as he is awfully weak.....Your gun is here, but I will keep it until a good man goes down' C. O. J's men would not take much care of it on the March. We have taken M. Youk's elephants, as he worked ours without leave, and he has behaved badly in his timber matters, so we intend to take a little out of his elephants. The men here are rather feverish, as there is nothing for them to do. We have got another elephant in exchange for 1 shot by some Karen, Beloo by name. We had good witnesses, and made a case in the Binya's court, which we won, getting one elephant worth 700 Rs., 2 tusks, and 4 buffaloes for the elephant shot, which they say was worth 1200 Rs.....Keep us well up in news, and send off elephants without a delay of a day whenever it is practicable.....Keep only Ramut Ally, Naigue, the Maistry, and another man at Yanbine. The rest of the men send up and the male

xiv

.....Do your best to be in possession of the timber, and with  
kind regards from my brother and myself.

Believe me,  
Yours Sincerely,  
FRED. N. BURN.

\* \* \* \*

S S S.

*M. Mouth, May 10th, 1865.*

MY DEAR MALING,

A man from Mr. Snadden with letters for my brother came in yesterday, and I send him on with them. Please do what you can to send him on quick if my brother has not returned to Mhineloongyee. Hill has had to go back again to Maulmain. I am afraid he will never do for the Jungles, though he writes cheerfully, and says he hopes to be back in a short time. I saw he was very seedy here, and told him if it continued, not to stop in Yanbine, but to go back, and I am glad he is gone where he can get a doctor. I have no news or papers of any kind, and am waiting anxiously for news from Zimmay and for the men from Mhineloongyee, as with my present scarcity, I can only get on slowly with the Kyodan. Unless I can get very strongly reinforced, I shall not attempt more than 1 Kyodan, but I will make that a good one of at least 100 canes tied together. I have now only got 10, but I have canes coming in daily, and hope to have 20 across in another week even with the men I have got.

I have had to double roof the whole of this house, which is a lot of work, but it leaked so horribly it was necessary to do it, and it is now nearly done. I have no more news. So requesting your attention to seeing my brother's letter sent on quick,

I remain, My dear Maling,  
Yours truly,  
FRED. N. BURN.

T T T.

*Mhineloongyee, 28th July 1865.*

MY DEAR MALING,

My brother has had bad fever, but is now much better, and I hope will soon be on his legs again. We are going to send as many elephants as we can spare with S. B. to get those things brought up last.....

We hope to goodness you will do you best for us at Yanbine with the 3 sailors. It is all in your hands, and you have experience in the matter. Touch up Johnstone whenever he requires it. We have written to Snadden our arrangements. So keep him well informed of every thing and keep up your diary. I hope your fever has all left you, and with kind regards from us both.

Believe me,  
Yours Sincerely,  
FRED. N. BURN.

W W W.

*Maulmain, May 11th, 1866.*

MY DEAR MCCALL,

I have to day again seen Clare, who repeats that Aga S. A. Sain is agreeable to contribute to the sum agreed upon for my assistance, but suggests as this is a business affair, and one to which there are several subscribers, the proper mode, to avoid any possible misunderstanding, is to draw up a memo of the terms agreed upon, and which I may add would be as much for your own protection on the one side as for mine on the other, as life is uncertain, and one really cannot tell what a day may bring forth. I annex therefore a short draft of what is required, and hope you may approve of same.

I have again been looking up this matter in my records, and think our road is clear enough, but of this more at the meeting.

Yours sincerely,

CHAS. O. JOHNSTONE.

P. S.—T. F. & Co. *only* need give me such a memo of course.

## MEMO OF AGREEMENT.

*Maulmain, May 11th, 1866.*

: C. O. J. Esq.

DEAR SIR,

In consideration of your rendering us the valuable information and assistance you possess, towards gaining the various suits now pending in regard to the Mhineoongyee timber, we agree that if successful in obtaining verdicts in the Recorder's Court, in our favor, we will pay to you the sum of Rs. ten thousand (Rs. 10,000) viz, one half (Rs. 5000) within ten days, and one half (Rs. 5000) within 2 months of date of said decree. If unsuccessful this agreement is null and void.

## DEFENDANT'S EXHIBITS.

### A.

#### EXTRACTS FROM TREATY AND AGREEMENT BETWEEN GREAT BRITAIN AND SIAM.

##### ARTICLE II.

The interests of all British subjects coming to Siam shall be placed under the regulation and control of a Consul, who will be appointed to reside at Bangkok: he will himself conform to and will enforce the observance, by British subjects, of all the provisions of this Treaty, and such of the former Treaty negotiated by Captain Burney in 1836, as shall still remain in operation. He shall also give an effect to all rules or regulations that are now or may hereafter be enacted for the government of British subjects in Siam, the conduct of their trade, and for the prevention of violations of the laws of Siam. Any disputes arising between British and Siamese subjects shall be heard and *determined by the consul*, in conjunction with the proper Siamese officers; *and criminal offences will be punished, in the case of English offenders by the consul, according to English laws*, and in the case of Siamese offenders, by their own laws, through the Siamese authorities. But the Consul shall not interfere, in any matters referring solely to Siamese, neither will the Siamese authorities interfere in questions which only concern the subjects of Her Britannic Majesty.

##### ARTICLE IV.

British subjects are permitted to trade freely in all the seaports of Siam, but may reside permanently only at Bangkok, or within the limits assigned by this Treaty. British subjects coming to reside at Bangkok may rent land, and buy or build houses, but cannot purchase land within a circuit of 200 *Sen* (not more than four miles English) from the city walls, until they shall have lived in Siam for ten years, or shall obtain special authority from the Siamese Government, to enable them to do so. But with the exception of this limitation, British residents in Siam may at any time buy or rent houses, lands, or plantations, situated any where within a distance of twenty-four hours' journey from the city of Bangkok, to be computed by the rate at which boats of the country can travel. In order to obtain possession of such lands or houses, it will be necessary that the British subject shall in the first place, make application through the Consul, to the proper Siamese officer; and the Siamese officer and the Consul, having satisfied themselves of the honest intentions of the applicant, will assist him in settling, upon equitable terms, the amount of the purchase money, will make out and fix the boundaries of the property, and will convey the same to the British purchaser under sealed deeds. Whereupon he and his property shall be placed under the protection

of the Governor of the district, and that of the particular local authorities ; he shall conform, in ordinary matters, to any just direction given him by them, and will be subject to the same taxation that is levied on Siamese subjects. But if through negligence, the want of capital or other cause, a British subject should fail to commence the cultivation or improvement of the lands so acquired within a term of three years, from the date of receiving possession thereof, the Siamese Government, shall have the power of resuming the property, upon returning to the British subject the purchase money paid by him for the same.

## ARTICLE 2

### ON THE EXCLUSIVE JURISDICTION OF THE CONSUL OVER BRITISH SUBJECTS.

The 2nd Article of the Treaty stipulates that,—"Any disputes arising between British and Siamese subjects shall be heard and determined by the Consul in conjunction with the proper Siamese Officers ; and Criminal offenders will be punished in the case of English offenders by the Consul according to English laws and in the case of Siamese offenders by their own laws through the Siamese Authorities. But the Consul shall not interfere in any matters referring solely to Siamese, neither will the Siamese Authorities interfere in questions which only concern the subjects of her Britannic Majesty.

On the non-interference of the Consul with the Siamese or of the Siamese with British subjects, the said Royal Commissioners desire in the first place to state that, while for natural reasons they fully approve of the Consul holding no jurisdiction over Siamese in their own country, the Siamese Authorities, on the other hand, will feel themselves bound to call on the Consul to apprehend and punish British subjects who shall commit, whilst in Siamese Territory, any grave infraction of the laws, such as cutting, wounding, or inflicting other serious bodily harm. But in disputes or in offences of a slighter nature committed by British subjects among themselves the Siamese Authorities will refrain from all interference.

With reference to the punishment of Offences, or the settlement of disputes, it is agreed :—

That all Criminal cases, in which both parties are British subjects, or in which the Defendant is a British subject, shall be tried and determined by the British Consul alone.

All Criminal cases in which both parties are Siamese, or in which the Defendant is a Siamese, shall be tried and determined by the Siamese Authorities alone.

That all Civil cases in which both parties are British subjects, or in which the Defendant is a British subject, shall be heard and determined by the British Consul alone : All Civil cases in which both parties are Siamese, or in which the Defendant is a Siamese, shall be heard and determined by the Siamese Authorities alone.



**B.**

*Original in Siamese signed by the Chief of Zimmay, and approved of by Krom Luang Wongsu, and attested by H. B. M. Consul as follows:—*

At Her Britannic Majesty's Consulate, Bangkok, this 18th day of April 1864, before me Sir Robert H. Schomburgh, appeared Choa Kha Wilowot Rat Suriwong, Prince of Changmai, and set his mark to this document in attestation thereof, declaring that he fully understood the tenor of it.

ROBERT H. SCHOMBURGH,  
*Her Majesty's Consul.*

**C.**

*Translation of the above.*

Choa Kha Wilowot Rat Suriwong, Ruler of Changmai, gives this document to Captain Burn and Moung Shoay Gan, to state, as to the forest of which Moung Shoay Gan is the overseer, according to an agreement with Chow Rajapoot, by which the forest is made over to him to superintend, from the year Chula Sakarat 1220 to the year Chula Sakarat 1230, the Chief of Changmai will not take it away from him, and give it to any other, in consideration that Captain Burn and Moung Shoay Gan have ceased the prosecution of their suit, so far as it concerns him the Chief of Changmai, and have concluded all matters between them.

Written Saturday the 10th of the waxing of the 5th Moon, year Chorok (April 16th, 1864.)

A true translation,

HY. ALABASTER,  
*Acting Interpreter, H. B. M. Consulate.*

This is to certify that the signature attached to the foregoing translation is that of the Acting Interpreter of this Consulate.

H. B. M. Consulate,  
Bangkok, 26th April, 1864.

ROBERT H. SCHOMBURGH,  
*H. B. M. Consul.*

**D.**

M ငါဟဲ

အများကျားသိစေချင်းငှါ၊ သတိပေးသည်။

မည်သူလူမျိုးမဆိုလက်တွင်၊ အထက်ရေးသားပါရှိသည့်တံဆိပ်နှင့်သစ်များကိုတွေ့လျှင်၊ သစ်ရှိသူအပါတွင်၊ အထက်ရေးသားပါရှိသည့်တံဆိပ်ပိုင်သူထံက၊ တရားမကြောင့်ဖြစ်စေ၊ ရာဇဝတ်ကြောင့်ဖြစ်စေ၊ တရားလမ်းရှိအပြုလုပ်စီမံမည်၊ သို့မဟုတ်၊ တယောက်လင်က၊ တကောက်လက်သို့ချထားလျက်ရှိသည့်၊ နောင်တယောက်စီထုခြေရှင်းလင်းကြရ

စိပ်မည်။ သို့ဖြစ်၍၊ ဆယ်ကိစ္စေးသာပါရှိသည့်သစ်များကို  
မောင်မင်းတို့ရှင်းလင်းစွာနေကြရမည်။

•E.

# PUBLIC NOTICE.

Whereas in the Burmese Era 1220, Chow Rajapoot, Chief of Xieng-mai, did give and grant a pass for ten years for the Mhineloongyee Forests to the undersigned, attested copy as below, and whereas certain Foresters, British subjects have some by fraud and misstatements obtained permits and cut Timber therein, from the Prince Ruler of Xiengmai and others, and whereas the undersigned has had a long and tedious law suit with the said Prince Ruler of Xiengmai, before the Senabodi or Royal Council of the Kingdom of Siam, and whereas the said Prince Ruler of Xiengmai did, on the 18th day of April 1864, by order of His Royal Highness the Prince Krom Hluang Wongsa, President of the Senabodi or Royal Council of Siam, under direct and immediate instructions from His Most Gracious Majesty the King of Siam, appear before Her Britannic Majesty's Consul and ratify said pass as aforesaid, and then and there, solemnly agree not to interfere with it.

This is to give Notice that all persons found trespassing within the said limits and cutting or removing Timber contrary to said pass, i.e. without permission of the undersigned will be at once apprehended and forwarded to the nearest authority.

MOUNG SHOAY GAN.

Certified English translation of proceedings of the Siamese Court forwarded by the Siamese Government to H. B. M's Consulate.

The letter of Chow Rajapoot of Xiengmai sent in friendship to Chow Luang of Maulmain and to Ayabeng, &c., and the authorities of Maulmain.

The whole of the Timber Forest of Mei Yuom from the Creek of Mei La Luanglong downwards to the mouth of the Mei Yuom belong all to Chow Rajapoot.

Chow Rajapoot has made MOUNG SHOAY GAN to overlook "dooley" it and to cut and buy and sell Teak Timber to Traders as MOUNG SHOAY GAN pleases, and to allow any one to cut Timber from the date 1220 till 1230—within this period any persons coming to cut Timber in the Forest are first to ask MOUNG SHOAY GAN. If MOUNG SHOAY GAN direct them to cut, they can do so, but if MOUNG SHOAY GAN should not direct them to cut they cannot cut, because Chow Rajapoot has given MOUNG SHOAY GAN charge to overlook. If any Chow Nai, Thow Khun, or any person come to cut Teak Timber in the Forest of Mei Yuom, they must first enquire of MOUNG SHOAY GAN. Should they not enquire they are to be forbidden to cut.

I Sir Robert H. Schomburgh, Knight, Her Britannic Majesty's Consul to the Kingdom of Siam residing at Bangkok, do hereby certify that the foregoing is a true and correct copy of the original docu-

ment in the archives of this Consulate, having been carefully examined and compared therewith.

In testimony whereof I do hereunto set my Sign and Seal this 26th day of April in the Year of Our Lord 1864.

ROBERT H. SCHOMBURGH.

L. S.

## F.

CERTIFIED English translation of proceedings of the Siamese Court forwarded by the Siamese Government to H. B. M.'s Consulate.

The letter of Chow Rajapoot of Xiengmai sent in friendship to Chow Luang of Maulmain and to Ayabeng, &c., and the Authorities of Maulmain.

The whole of the timber forest of Mei Yuom from the creek of Mei La Luanglong downwards to the mouth of the Mei Yuom belong all to Chow Rajapoot.

Chow Rajapoot has made MOUNG SHOAY GAN to overlook "doo-ley" it, and to cut and buy and sell teak timber to traders as MOUNG SHOAY GAN pleases, and to allow any one to cut timber from the date 1220 until 1230. Within this period any persons coming to cut timber in the forest are first to ask MOUNG SHOAY GAN.

If MOUNG SHOAY GAN direct them to cut, they can do so, but if MOUNG SHOAY GAN should not direct them to cut, they cannot cut, because Chow Rajapoot has given MOUNG SHOAY GAN charge to overlook.

If any Chow Nai, Thow Khun, or any person come to cut teak timber in the forest of Mei Yuom, they must first enquire of MOUNG SHOAY GAN, should they not enquire they are to be forbidden to cut.

I Sir Robert H. Schomburgh, knight, Her Britannic Majesty's Consul to the Kingdom of Siam, residing at Bangkok, do hereby certify the foregoing is a true and correct copy of the original document in the archives of this Consulate having been carefully examined and compared therewith.

In testimony whereof I do hereunto set my sign and seal this 26th day of April in the Year of Our Lord 1864.

ROBERT H. SCHOMBURGH.

On Monday the 7th March, the Court directed Chow Rajapoot to be sworn and examined, as follows:—

*By the Court.*

When Rajapoot gave MOUNG SHOAY GAN the letter, did Chow Rajapoot do so because MOUNG SHOAY GAN had rented the forest entirely to cut timber for 10 years, or only authorizing him to be overseer, to allow other people to cut, and to collect the duties for Chow Rajapoot?

*Chow Rajapoot.*

I gave MOUNG SHOAY GAN a letter which explained the matter.

The letter was produced and read by the Court in the presence of Chow Rajapoot who acknowledged that it was his letter.

I Sir Robert H. Schomburgh, Knight, Her Britannic Majesty's Consul for the Kingdom of Siam, now residing in Bangkok, do hereby certify that the foregoing is a true and correct copy of the original

record in the archives of this Consulate having been carefully examined and compared therewith.

In testimony whereof I do hereunto set my hand and affix my seal of Office this 26th day of April in the Year of Our Lord 1864.

ROBERT H. SCHOMBURGH.

G.

Maulmain 17th October, 1858.

Received from Mr. A. Hobday Company's Rupees Six Hundred and fifty, Co's Rs. 650, being part payment of the duty due by MOUNG YOUNK and MAH OO in the Shan States to me as Agent of the Mhine-loon-gyee Forest owners, for and on account of 400 logs of Teak Timber the said MOUNG YOUNK and MAH OO are to bring away.

ကိုးခွက်လက်မှတ်

Witnesses

A. LENAINE.

H.

Maulmain, 17th October, 1858.

I promise to pay to MOUNG SHOAY GAN, authorized agent of the owners of the Mhine-loongyee Forest, the sum of Company's Rupees One Thousand on or before the end of December 1858,—being the balance due by MOUNG YOUNK and MAH OO of the Shan duty on 400 logs of Teak Timber to be brought away by them.

A. HOBDAY.

Witnesses,

A. LENAINE

I.

Not Transferable

ဂရပ်စာ ကိုသူတထူးလက်သို့မထွေးမပေးရ

No. 775.

Certified that Mr. Snadden has paid Rupees Ten as Fee for Registering the Hammer as per fac-simile below.

M

M. J. SLYM,

Assistant Conservator of Forests.

K

A D O E,

Revenue Station,

The 27th January, 1865.

J.

Copy of Certificate of Hammer Registration with the names of MOUNG SHOAY GAN cancelled.

NOT TRANSFERABLE.

ဂရပ်စာကိုသူတထူးလက်သို့မထွေးမပေးရ

No. 424.

Certified that Captain R. C. Burn has paid Rupees Ten as Fee for

Registering the Hammer as per fac-simile below.

၁၇၅

M. J. SLYM,  
*Assistant Conservator of Forests.*

KADOE,  
Revenue Station,  
The 27th January, 1865.

*Same Advertisement as D. in Commercial Advertiser, dated 20th September 1865.*

### L.

Know all men by these presents that, whereas an Agreement dated 31st July 1860, was entered into between R. & W. Snadden on the one part, and A. Lenaine on the other part, whereby the said A. Lenaine agreed and bound himself to deliver to R. & W. Snadden a quantity of Mhineloongyee Teak Timber within a given time, and at a rate specified, and whereas the said agreement is still in part unfulfilled, it is hereby agreed between the said parties that in consideration of the said A. Lenaine relinquishing all further claims to such remaining Timber of the above agreement as may hereafter be found in the Shan States, Rivers, or Sea coast of Tenasserim, the said R. & W. Snadden absolve the said A. Lenaine from all further claim in respect of the above agreement and advances. And whereas the said R. & W. Snadden and A. Lenaine did on the 1st April 1861 enter into a Contract and agreement, by virtue of which a partnership engagement was entered into by them for the working of certain of the Mhineloonghee Forests held under a Grant or Grants from the Chief of Zimmay, and to which agreement the said parties executed an Addenda, bearing date 17th October 1862, having further reference to the working and conduct of the said partnership agreement, it has now been determined and resolved by the said R. & W. Snadden and A. Lenaine, by mutual consent and in good faith and for reasons of mutual expediency, to terminate once and for ever all and every portion, of the aforesaid Contracts and Agreements in so far only as they have not already been fulfilled, by the substitution of new conditions, which shall operate as a complete release, discharge, and extinguishment of all such former contracts and agreements of every kind or description whatsoever. It is hereby covenanted and agreed upon by the said parties viz. R. & W. Snadden on the one part and A. Lenaine, on the other part :—

1st. That the said A. Lenaine, his heirs, executors, administrators and Assigns, be hereby declared released and absolved from all liabilities, rights, obligations, claims and demands that may be made upon him by the said R. & W. Snadden for monies advanced for the purposes of these agreements.

2nd. That all rights, benefits, and advantages appertaining to the said Mhineloongyee operations be henceforward vested solely and entirely in R. & W. Snadden, their heirs, executors and administrators and assigns.

3rd. In consideration of his release from liabilities and obligations as detailed above under all former contracts entered into by him with R. and W. Snadden by the said A. Lenaine for himself, his heirs, executors, administrators and assigns, hereby voluntarily agrees and binds himself to relinquish his whole right title, and interest in and to all properties of every kind and description of which he may be at present possessed in the Shan States under the Chief of Zim-may relating to or in any respect connected with the Mhineloongyee operation herein described, and he hereby makes over and transfers all such properties which he declares to be without encumbrances of any kind to the said R. and W. Snadden their heirs, executors, administrators and assigns, together with all Teak Timber wheresoever found, cut, killed, felled, or worked to which he may have already acquired any right or title in any portion of the Mhineloonghee district, or which may in future be acquired by him in any forests in the said District up to or until the expiration of the term or period of the Grant or Grants under which certain of the said forests were held by him. It is stipulated and agreed by the said A. Lenaine that all rights, monies, contracts, privileges and powers at present enjoyed by him the said A. Lenaine, or held at his disposal and which in any way pertain to or are connected with the working of any Timber in any of the Mhineloongyee Forests whether such Forests are contained or included in the Grants or not, be hereby declared by this agreement transferred to R. and W. Snadden until the expiration of the term of such Grant or Grants, which latter, he the said A. Lenaine binds himself duly to endorse over, and together with this agreement to duly register in the Maulmain Court—and he the said A. Lenaine further binds himself for a like period faithfully and rigidly to abstain from all interference of either a direct or indirect nature in any matters connected with the properties and Timber hereby transferred by him to R. and W. Snadden and at present situated within the Shan States, Rivers, and Sea Coast of Tenasserim, either by corresponding or holding any communications with any of the Shan Chiefs or others who may have any control or dominion over any of the said Forests or by any other means whatsoever, provided that nothing in this agreement shall be construed to have the effect of preventing the said A. Lenaine from aiding and assisting as he hereby binds himself to do for a period of one year from date of this agreement, wheresoever he may then be in every way in in his power the said W. and R. Snadden (only when called upon by them to do so) by such reasonable correspondence addressed to the Shan Chiefs or others whom it may concern in the Shan States as an honest and prudent man of business may feel himself called upon to write in the proper conduct of his own affairs, and provided also that all such correspondence shall relate to and be necessary to the efficient working of any of the aforementioned Forests or essential in the recovery of any of the Timber or other properties made over under this agreement by A. Lenaine, to R. and W. Snadden.

4th. The said R. and W. Snadden on the one part, and the said A. Lenaine on the other part, having bound themselves mutually to abide by the terms and conditions above set forth in this agreement, do further agree for the better fulfilment and performance of the

said terras and conditions to be bound one to the other in the payment of a penalty of (Rs. 200,000) two hundred thousand Rupees as liquidated damages for any wilful breach of this agreement by which material injury may result to either party and by which the said agreement may become cancelled or rendered null or void.

In Witness whereof we have this day, the 21st of April, in the year 1863, set our hands and seals.

R. & W. SNADDEN,  
A. LENAINE.

Witnesses,  
C. O. JOHNSTONE,  
T. WILLIAMS.

### M.

KNOW all Men by these presents that whereas an Agreement, dated the 6th day of May 1863, was entered into between Messrs. R. & W. Snadden, on the one part, and Mr. C. O. Johnstone, on the other part, whereby the said C. O. Johnstone agreed to purchase and hold in trust for R. & W. Snadden until purchase money was fully paid, and for all advances made for the working of certain Forests of Mhineloonghee, it has now been determined and resolved by the said R. & W. Snadden and C. O. Johnstone by mutual consent in good faith for reasons of expediency and for valuable consideration hereby paid to C. O. Johnstone (which consideration the said C. O. Johnstone does hereby acknowledge the receipt of in full) to cancel said Agreement, dated 6th day of May aforesaid, and these presents shall operate as a complete release, discharge and extinguishment of all such Agreement and every condition thereof. It is hereby covenanted and agreed upon by the said parties, viz., R. & W. Snadden on the one part, and C. O. Johnstone on the other:—

1st. The said C. O. Johnstone, his heirs, executors administrators and assigns be hereby declared released and absolved from all liabilities, rights, obligations, claims and demands that may be made upon him by the said R. & W. Snadden for said purchase money, all monies advanced agreeably to said Agreement of 6th May 1863.

2nd. That all rights, benefits, and advantages appertaining to the said Mhineloonghee Forests, all Elephants including formerly the property of C. O. Johnstone, all working tools and implements, and all articles relating to forest operations, or any other forests in the Mhineloonghee Creek, over which C. O. Johnstone may have obtained rights and privileges, be henceforth vested solely and entirely in R. & W. Snadden, their heirs, executors, administrators, and assigns.

3rd. That this Agreement be duly registered in the Maulmain Courts.

4th. That C. O. Johnstone agrees to duly endorse and deliver over to the said R. & W. Snadden all papers and documents appertaining, either directly or indirectly to the said Mhineloonghee Forests, and the said C. O. Johnstone binds himself faithfully to abstain from any interference during the whole term that the rights and privileges aforesaid have to run, in any matters connected with the properties hereby declared duly transferred to R. & W. Snadden.

5th. C. O. Johnstone further binds himself for the space of one year to aid and assist to all the extent in his power the operations

of R. & W. Snadden, their Agents or assigns, in the working of the said forests, only when called upon to do so by the writing of such letters to the Shan Chiefs or others whom it may concern in the Shan States, as an honest and prudent man of business would feel himself called upon to write in the proper conduct of his own affairs, all such correspondence to relate, and be necessary for the efficient working of any of the Timbers, or other properties made over under the Agreement to R. & W. Snadden.

6th. The said R. & W. Snadden on the one part, and C. O. Johnstone on the other part, having bound themselves mutually to abide by the terms, and conditions above set forth, do further agree for the better fulfilment and performance of the said terms and conditions, to be bound one to the other in the payment of a penalty of Rupees (50,000) fifty thousand, for any wilful breach of any of the terms of this agreement.

In witness whereof we have, in Maulmain, this 24th day of January 1865, put our hands and seals.

In presence of us.

R. C. BURN.

THOMAS WILLIAMS.

R. & W. SNADDEN.

C. O. JOHNSTONE.

No. 5.

Registered at Maulmain before me this twenty fifth of January 1865 at one o'clock P. M., being No. 5 at page 5 of the General Register of 1865.

G. E. BARR,  
*Registrar of Leeds.*

N.

*Burmese Original.*

O.

*Translation of above.*

Burmese Year 1222, the 9th day of the waning of the Moon Tagoo (corresponding to the 14th of April 1860.)

I, the undersigned Moungh Shoay Gan, a Thit-goung, who have obtained the Main-lah-gyee and Main-lah-glai Forests on the Mhine-loongyee Creek, from, and by virtue of sealed Permits granted unto me, for a period of ten years, by the Forest Proprietor, Chow Rajapoot, the Prince of Zimmai—do hereby made over, and transfer the said Forests, with the said sealed Permits (or orders), to Mr. Lennaine, who shall cut and work out the Timbers in the said Forests, as I myself should do, and pay, without neglecting, the usual Duty to the Proprietor of the said Forests.

Transferred, and delivered the Permits (or orders) in presence of the following witness.

Witnesses.

MOUNG NAW.

GEORGE DAWSON.

30th June, 1863.

MOUNG SHOAY GAN.

(A true Translation from The Burmese.)

STEPHEN MCKERTICH,

*Translator.*

September 28th, 1865.



Transferred to Messrs. R. and W. Snadden, as per Bond of 21st April, 1863.

A. LENAINE.

P.

*Sum<sup>a</sup> Advertisement as E. in Maulmain Observer  
of 14th June 1864.*

Q.

*Burmese Original of O.*

R.

KNOW all men by these presents that Messrs R. & W. Snadden on the one part, and Captain R. C. Burn and Mounng Shoay Gan on the other part, have this day made and concluded the following conditional Bill of sale and Agreement:—

1st. That the said R. & W. Snadden sell all their Right, Title, and Interest in the Mhineloongyee Forests, and all Timber, elephants, and other property of whatever nature or kind appertaining to these operations as they now exist, without any guarantee as to value or extent, the property being equally well known to the present purchasers whether found in the Forests, Rivers or Sea coast of Tenasserim or Shan States, for and in consideration of the sum of one hundred and fifty thousand Rupees (Rs. 150,000) to Captain R. C. Burn and Mounng Shoay Gan, and the aforesaid Captain R. C. Burn and Mounng Shoay Gan hereby agree to purchase the aforesaid property at the sum above mentioned, to be paid within twelve months from this date free of Interest, the said purchasers binding themselves to purchase the claim of C. O. Johnstone to the said property. It is understood that all Timber now at Kadoe in the hands of R. & W. Snadden is excluded from this Agreement.

2nd. That the property as above set forth be held by the said Captain R. C. Burn and Mounng Shoay Gan only in trust for the said R. & W. Snadden until the sum of the purchase money has been paid along with all advances to be made and interest to grow due thereon. That the purchase money is to be paid first from the delivery of Timber as they arrive. That all advances bear interest at the rate of three per cent per mensem and to be repaid immediately after the purchase money. The purchase money to bear interest at the rate of two per cent per mensem if not paid within the time stipulated.

3rd. That the sums of money to be advanced for the working of the said Forests by R. & W. Snadden to Captain R. C. Burn and Mounng Shoay Gan be to the following extent:— Fifteen thousand Rupees on signing this Agreement, and an additional sum of fifteen thousand on the delivery at the Timber Revenue Station, Kadoe, of all Timber at present below the Kyouk Pike and bearing the marks S. A. L. and those of the old Timber purchased by A. Lenaine from numerous Burmese and Karens, this advance not to be considered due till the end of the month of May 1865. R. & W. Snadden further agree in the event of any litigation occurring regarding Timber now claimed by Burmese to advance a further sum as it may be required,

not to exceed in all five thousand rupees. R. and W. Snadden also agree to advance one thousand rupees monthly to Messrs. Hobday & Co. for the month of January, February, March and April 1865 only, to enable Captain R. C. Burn and Moungh Shoay Gan to complete their arrangements for the working of the Forests. It is understood that Captain R. C. Burn draw all monies due on this Agreement, and that his receipt will be binding on all parties.

1<sup>th</sup>. That the said Captain R. C. Burn and Moungh Shoay Gan bind themselves to personally superintend the work in the Forests during the term of this Agreement.

5<sup>th</sup>. That all Timber brought down from these Forests bear the mark of R. and W. Snadden M. in addition to one or other of Captain R. C. Burn's registered marks. Nga heh and Wondouk in Burmese characters until all the claims of R. and W. Snadden have been liquidated in full.

6<sup>th</sup>. That Captain R. C. Burn and Moungh Shoay Gan bind themselves to deliver and sell to the said R. and W. Snadden all Timber that may arrive during the continuance of this Agreement from these Forests, and R. and W. Snadden bind themselves to purchase all such Timber, at the rate of forty two rupees and eight annas per log, for all logs of three cubics in girth and upwards and twenty cubics in length and upwards, with the usual proportion of long lengths, not to be under 25 per cent of the whole delivered, all smaller Timber to be rejected and sold for the benefit of Captain R. C. Burn and Moungh Shoay Gan. The half of the proceeds to go to the liquidation of the claims of R. and W. Snadden. Messrs. R. and W. Snadden bind themselves to pay, ten clear days after the delivery of the Timber and Government Timber Revenue Reports, and provided that all litigation has ceased, the sum of rupees ten per log in part payment for them, the balance to be carried to account of the claims of R. and W. Snadden herein mentioned.

7<sup>th</sup>. It is understood that Captain Burn and Moungh Shoay Gan agree to settle all debts due to the Coolies, since the management of Mr. C. O. Johnstone, viz., 5<sup>th</sup> May 1863. They will also reclaim all Elephants that have been pledged by the Coolies.

8<sup>th</sup>. R. & W. Snadden bind themselves to sign all letters facilitating the working of the Forests that Captain R. C. Burn and Moungh Shoay Gan may wish, always providing such letters do not invalidate their interests or lien on said property.

9<sup>th</sup>. That in the event of Captain R. C. Burn and Moungh Shoay Gan abandoning or failing to carry out the terms of the above agreement, they bind themselves to return all property, advances, documents, and papers unaltered and unimpaired in value to the said R. & W. Snadden when called on by them to do so.

10<sup>th</sup>. That all the expenses of litigation in connection with these Forests of whatever nature and with whomsoever be borne by R. C. Burn and Moungh Shoay Gan, whether the same be conducted in their name or that of R. & W. Snadden, and all such monies to be considered as advanced when paid by the said R. & W. Snadden.

in witness hereof, we have, in Maulmain, this twenty-fifth day of January 1865, put our hands and seals.

Witnesses to all three signatures.

A. HOBDAV.

THOMAS WILLIAMS,

R. & W. SNADDEN.

R. C. BURN.

မောင်ရွှေကံ(တံဆိတ်ပုံ)

မောင်ရွှေသဲအထိ(တံဆိတ်ပုံ)

S.

*Original of above.*

W.

Chao Kha Wilovot Rat Suriwong, Ruler of Chiengmai, gives this document to Captain Burn and Mounng Shoay Gan to state as to the forests of which Mounng Shoay Gan is overseer, according to an agreement with Chow Rajapoot by which the forest is made over to him to superintend from the year Chula Sakarat 1220, to the year Chula Sakarat 1230, the Chief of Chiengmai will not take it away from him and give it to any other; in consideration that Captain Burn and Mounng Shoay Gan have ceased the prosecution of their suit so far as it concerns him the Chief of Chiengmai and have concluded all matters between them.

Written Saturday the 10th of the waxing of the 5th Moon year Choset Chosok (April 16th 1864.)

A true translation.

HENRY ALABASTER,

*Acting Interpreter,*

*H. B. M. Consulate.*

I Chao Phya Pha Tara Pi, Regent of the Northern Provinces of the Kingdom of Siam and also of the Laos states including Chiengmai, Laboon, Lagoon, its tributaries of Siam, having perused the document above given, and which document purports to be a copy of the original agreement given to Mounng Shoay Gan and Captain Burn by Chao Kha Wilovot Rat Suriwong, Chief of the tributary Province of Chiengmai aforesaid, and which original agreement is now said to have been filed in the Courts of Maulmain, hereby certify that in accordance with the said agreement Chao Kha Wilovot Rat Suriwong has no legal right or power to allow any other than Mounng Shoay Gan or Captain Burn to take timber from the Mhine-loongyee Jungles, and that therefore any documents, passes, or papers granted by the aforesaid Chao Kha Wilovot Rat Suriwong after the date of the said agreement, viz: April 16th 1864 and before the expiration of the year 1230 to any others than Captain Burn or Mounng Shoay Gan to take timber from the aforementioned Jungle of Mhine-loongyee are illegal and of no effect; he the aforesaid Chao Kha Wilovot Rat Suriwong being a tributary of His Majesty the King of Siam and not being vested with any authority or power which enable him to repudiate agreements entered into at Bangkok

With the approval of his Royal Highness Krom Hluang Wongsa, the then acting Regent of the Northern Provinces and tributaries of Siam unless such repudiation has the sanction of the Government of Siam, which in the present case has not been granted.

I Thomas George Knox, Her Britannic Majesty's Consul for the Kingdom of Siam, now residing at Bangkok, hereby certify that the Seals attached to the documents annexed hereto, one of which documents is in the Siamese language, and the other in English, both documents conveying in every respect the same meaning and intention, are the Seals of His Excellency Chao Phya Phutharapai, the Regent of the Northern Provinces of the Kingdom of Siam, and of the Laos states, including Chiangmai, Lacoön, Laroon and tributaries of Siam; and that the aforesaid Chao Phya Phutharapai, as Regent of the Northern Provinces and Laos states Tributary to Siam is to the best of my knowledge and belief, fully competent to grant such documents; and that moreover he has granted these documents with the full knowledge and consent of the Government of Siam.

In witness whereof I have hereunto set my hand and affixed my seal of office at Bangkok aforesaid this 31st day of October in the year of our Lord one thousand eight hundred and sixty five.

• THOMAS GEORGE KNOX,  
*H. B. M. Consul*

L. L.

Dated, Rangoon, the 14th May, 1866.

From

MR. E. FOWLE,  
*Consul for Siam.*

R. SNADDEN, Esq.,  
*Mandarin.*

SIR,

I have the honor, in reply to your application to be furnished with a copy of a document received by me from the Court of Siam, detailing the powers and jurisdiction of the Kingdom of Siam over her dependent provinces and tributary states, to enclose written upon stamped paper as desired extracts from an official communication giving the details of every province and Tributary State, the extracts made are those treating particularly about the promise of Zimmay, written by the Siamese Chiangmai.

I have the honor to be,

Sir,

Your most obedient Servant,

E. FOWLE.

*Hluang Siammagroh,*  
*Consul for Siam in British Borneo.*

**M M**  
**Z Z**

Extracts from an Official communication, dated March the 15th. forwarded to Mr. E. Fowle, Consul for Siam, by the Minister of Civil affairs and president of the Northern Provinces of Siam and tributary States of Laos by Command of His Majesty the King of Siam.

Extracts.

TO EDWARD FOWLE, Esquire,

*Hluang Siamongroh,  
Siamese Consul,  
at Rangoon.*

SIR,

His Siamese Majesty has commanded me to let you know and understand what authority the kingdom of Siam exercises over her dependent provinces and tributary States.

All the tributary Laos states—that is Chingmai, Lamphoon, Nāg-orianpaug, Pree, and Nand, with the townships under them, were formerly independent countries governed by their own Princes.—Now from the year of the Tiger 4th of the decade Siamese Civil Era 1744, agreeing with the Christian Era 1782, went back until the year of the Tiger 2nd of the decade in the Siamese Civil Era 712, agreeing with the Christian Era 1350, which was the first year of the establishment of the ancient city of Ayuthea, the above named countries were in a constant state of turmoil and agitation, becoming sometimes tributary to Burmah, sometimes to Pegue, and sometimes to Siam; and these changes occurred many times. Whichever side was for the time being the most powerful and prosperous, they were obliged to become tributaries to them. The Burman, Peguan, and Siamese Kingdoms were continually at war with each other. The Laos countries being located between them and having but little power were disturbed and troubled going and coming from one to the other.

Since the year of the Tiger 4th of the decade Siamese Civil Era 1144, agreeing with the Christian Era 1785, being the first year of the establishment of the present Royal Dynasty, they have been tributary to Siam, in accordance with the outer tributary States as aforementioned and have not been tributary to Burmah, nor been able to become independent from the above date when Chingmai came under the authority of the King of Siam; four reigns in all to the present time, and has continued so uninterruptedly for 84 years.

The countries which are still tributary to Burmah begin at Chiang tung.

This is a true account of affairs. If you think proper, please accept this sealed letter and these statements as perfectly reliable—they are the words of His Majesty the King of Siam made known to the Queen of England and to the English Judges who are in treaty relations of true friendship with the Kingdom of Siam. The statement of the Peguans and Burmans cannot be taken as true, because they were formerly the enemies of Siam, and were accustomed to make numerous and great wars with Siam, and previously to the 84 years before the present time must have gathered up all their former complaints.

There being now a Royal command to me the Senabodi, whose business it is to exercise the supervisional control of the Laos tributary states, which are Chiengmai, Lanphoon, Nagalumpang, Free, and Nand, one and all of them to write to you, and in testimony whereof this writing is sealed with the seal by the Phra Raysot, the Chief officer, and given into your hands that you may be able with these statements definitely to reply to and completely refute all opponents they being the established words of His Majesty the King of Siam.

Written in the Siamese, English, and Burmese languages, one copy in each, all of the same tenor and date.

I have the honor to be,

Sir,

Your most obedient Servant,

CHOW PHYA BUDHARA BHAY,

*Minister for the Northern  
Provinces of Siam.*

V. V. V.

Maulmain, January 24th, 1865.

MY DEAR BURN,

I accept your offer—the two Promissory notes of Moung Poo for Rs. 15,000 as a complete settlement in lieu of the amount I was otherwise to have received out of the Mhineloonghee business.

Yours Sincerely,

CHAS. O. JOHNSTONE.

Y. W. H. C.

No. <sup>190</sup>  
258

From

Captain G. E. FRYER,

*Asst. Secretary to the Chief Commissioner  
of British Burma.*

To

THE COMMISSIONER OF TENASSERIM,

*Dated Rangoon, 10th February 1866.*

SIR,

I am directed by the Chief Commissioner of British Burma, to forward to you extract from a letter, No. 50 dated 20th ultimo, to his address, from the Secretary to the Government of India, Foreign Department, relative to letters heretofore occasionally written to independent Chiefs, and to request your strict observance of the order therein given.

I have the honor to be,

Sir,

Your most obedient Servant,

G. E. FRYER,

*Assistant Secretary.*

Extract from letter No 50, dated 20th January, 1866, from the Secretary to the Government of India, Foreign department, to the Chief Commissioner of British Burma.

His Excellency in Council conceives that the broad principle for British Officers to observe in all civil questions, the subject matter of which lies beyond our frontier, is to be very chary of interference at all, and certainly never to take action of any kind until complete information of all the circumstances of the particular case may have been secured. The Government of India has reason to fear that the practice of British officers addressing Chiefs on questions in which pecuniary interests are involved has become common in British Burma, and I am desirous to take this opportunity to express that stringent orders may be at once enunciated to the general prohibition of a custom so likely to lead to inconvenient results.

True Copy,

G. E. FRYER,  
*Assistant Secretary.*

## Z. W. H. C.

No. 1523.

FROM

CAPTAIN C. P. HILDEBRAND,

*Offg. Secy. to the Chief Commissioner of British Burmah.*

TO

MESSRS. TODD, FINDLAY & Co.,

RANGOON

Dated Rangoon, the 5th July 1866

GENTLEMEN,

In continuation of this office letter No. <sup>1124</sup>/<sub>100</sub> M. dated 5th January last, intimating the despatch of two Memorials by certain  
GENERAL. Merchants and Foresters of Maulmain, addressed to the Secretary of State for Foreign Affairs and to His Excellency the Viceroy and Governor-General in Council, on the subject of certain complaints against Colonel FYTCHE, Commissioner of the Tenasserim Division of British Burmah, and Mr. KNOX, Her Majesty's Consul at Bangkok, regarding the working of certain forests situated within the Siamese territory of Mhyndoongyee, under the Chief of Zimmay, I am directed by the Chief Commissioner to state that the Governor General having addressed Her Majesty's Consul of Bangkok on the subject of these complaints, that officer submitted an explanation in which he vindicates himself at length from the charges preferred against him.

Colonel FYTCHE also, on receiving a copy of your letter complaining of his conduct, at once addressed a letter to the Secretary to Government vindicating himself, and His Excellency in Council has recorded his opinion that so far as the papers on both sides enable him to form an opinion on the subject, he considers that the Memorialists have failed to substantiate their complaint, and that there is little foundation for the complaints generally which have been urged by them.

The interference of Colonel FYTCHE in the matter is, His Excellency observes, to be regretted on principles of general policy, though on this particular occasion his interference apparently did not result in any real injury to the Memorialists.

A Copy of Mr. Secretary W. MURR's letter No. 584 of the 5th ultimo, containing the final orders of the Governor-General in Council upon the subject, is herewith forwarded for the information of the Memorialists.

I have, &c ,

(Signed) C. P. HILDEBRAND.

*Offg. Secretary.*

No. 1524.

CHIEF COMMISSIONER'S Office, 6th July 1866.

Copy forwarded to Colonel BROWN, Offg. Commissioner of Tenasserim, for information.

(Signed) C. P. HILDEBRAND,

*Offg. Secretary.*

True Copy.

(Signed) D. BROWN, LT-COL.,

*Offg. Commr. T. D.*

No. 584.

From

THE SECRETARY TO THE GOVERNMENT OF INDIA.

To

THE CHIEF COMMISSIONER OF BRITISH BURMAH.

Dated Simla, the 5th June 1866.

SIR,

In reply to your letter No. 57, dated 24th April, forwarding a communication from Her Britannic Majesty's Consul at Bangkok, in which that officer vindicates himself at length from the charges brought against him by certain persons resident in Maulmain, I am directed to transmit for your information the accompanying copy of a dispatch which has been addressed direct from this office to Mr. Knox. From it you will perceive that in the opinion of the Governor-General in Council there is little foundation for the complaints generally which have been urged by the Memorialists against Colonel Fytche and Mr. Knox.

2. As already intimated to you in para 2 of my former letter, No. 50 of 20th January last, the Government of India cannot take cognizance of what has been done in Siamese territory; upon this ground the Memorialists now may be informed, in reply to the Memorial addressed by them to the Viceroy and Governor-General of India, that if they still consider themselves aggrieved in the matter of their dispute regarding the Timber of the Mhineloonghee Forest, the course open to them is to lay their Case before the Native Authorities of the Siamese Government and Her Britannic Majesty's Consul at Bangkok.



You will add that, with regard to Colonel Fytche's proceedings in the affair, His Excellency in Council regrets on principles of general policy that the Commissioner of Tenasserim should at all have interfered in any case the subject matter of which was the pecuniary interests of private persons in property situated beyond the British frontier, but that at the same time it is not clear to the Government of India that his interference on this particular occasion resulted in any real injury to the Memorialists.

I have, &c.,

(Signed) W. MUIR.

*Secy. to the Government of India.*

True Copy.

(Signed) C. P. HILDEBRAND,

*Offg. Secretary.*

## REFERENCES, & C.

### IN THE COURT OF THE RECORDER OF MAULMAIN.

*Civil Regular Suit No. 153 of 1865.*

The Recorder of Maulmain, in pursuance of the provisions of Act XXI of 1863, Section XXII, begs leave respectfully to submit the following case for the consideration of the High Court of Judicature at Fort William in Bengal.

On the 13th September, 1865, Moung Khine, Thomas Dunlop Findlay, James Findlay, and John McCall filed, in this Court, against Robert Campbell Burn, Moung Shoay Gan, and Richard Snadden the Plaint following :

*(The whole of the plaint is here quoted.)*

R. C. Burn, the first Defendant, by his written Statement as answer, alleged amongst other things.

*(Paras 8, and 11 of defendant Burn's statement are here quoted.)*

The third defendant, Richard Snadden, by his statement amongst other things alleged that he did receive the 52 logs in accordance with the Agreement under which he made over the forests to first and second defendants, as stated by first defendant in para 8 of his Answer.

The defendants filed the deed of Agreement mentioned in para 8 of the first defendant's answer, by which the first defendant binds himself to deliver all timber arriving from these forests at 40 Rupees per log of specified dimensions, half the proceeds to go in liquidation of a debt of the first defendant, and the sum of 10 Rupees per log to be paid within 10 days after the delivery of the timber, provided all litigation had then ceased. A copy of this deed is annexed to the case.

After the settlement of issues, the first defendant, R. C. Burn, died. The Recorder was of opinion that the representatives of the said first defendant had such an interest in the subject matter of the suit that the suit could not be properly heard in their absence, and he accordingly adjourned the hearing of the suit to a future day, and directed the representatives of the said defendant to be made parties.

On the application of Mr. Law, Advocate for the Plaintiffs, the Recorder respectfully submits for the consideration of this Court the following question :

Was the Recorder bound to proceed with the suit in the absence of the representatives of the first defendant, R. C. Burn?

J. PITT KENNEDY,

*Recorder of Maulmain.*

Maulmain, )  
The 4th January 1866. )

# HIGH COURT OF JUDICATURE, FORT WILLIAM, IN BENGAL.

*The 15th June 1866.*

PRESENT,

The Hon'ble Sir B. PEACOCK, Kt., Chief Justice.

The Hon'ble LOUIS S. JACKSON, one of the Judges.

---

Reference from Recorder of Maulmain under Section XXII  
of Act XXI of 1863.

---

MOUNG KHINE and others.

*Versus.*

R. C. BURN and others.

*Judgment.*—By Section 20, Act XXI of 1863, it is enacted that “ save as in this act otherwise provided, the proceedings in Civil Suits of every description between party and party brought in any Court established under this Act. shall be regulated by Act VIII of 1859 (*the Code of Civil Procedure*) as amended by Act XXIII of 1861, and by any other act or acts that may hereafter be passed for that purpose.”

By section 99, Act VIII of 1859, it is provided that “ the death of a Plaintiff or Defendant shall not cause the suit to abate if the cause of action survive,” and by section 100 it is provided that “ if there be two or more Plaintiffs or Defendants, and one of them die, and if the cause of action survive to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the suit shall proceed at the instance of the surviving plaintiffs, and against the surviving defendant or defendants.”

In this case the first defendant R. C. Burn ceased to have an interest in the logs which were the subject of the suit, for they were made over by him to the third Defendant, who received them in fulfilment of the agreement entered into between the first, second and third Defendants. By the terms of that agreement the first Defendant bound himself to deliver all Timber arriving from the Forests mentioned in the suit at 40 Rs. per log of specified dimensions, half the proceeds to go in liquidation of a debt due by the first Defendant and the sum of 10 Rs. per log to be paid within 10 days after the delivery of the timber, provided all litigation had then ceased.

The logs having been delivered over in pursuance of the agreement, the first defendant ceased to have any further interest in them, and was merely entitled to the payment of 10 Rs. per log to be made according to the terms of the agreement. The suit was for the recovery of the possession of the timber, and the cause of action, if any, against the other Defendants, survived. The first Defendant having no interest in the logs, it is not necessary that the suit should be revived against his representatives.

We therefore certify our opinion to the Recorder of Maulmain that the suit ought to proceed without making the representatives of the first Defendant, R. C. Burn, parties thereto.

MEMO.

No. 2052.

Copy forwarded to the Registrar of the Court of the Recorder of Maulmain for information with reference to his letter No. 9 of the 26th February last.

By order of the High Court,

J. BELCHAMBERS,

*Deputy Registrar.*

HIGH COURT, }  
Appellate side, }  
The 30th June, 1866. }

# IN THE COURT OF THE RECORDER OF MAULMAIN.

*Civil Regular No 191 of 1866.*

Saya Loo.	)	<i>versus.</i>	{	1 Nga Paw Loo
	)		{	2 Nga Teo, and
	)		{	3 Nga Sy. Nyeng.

SUIT to recover Twelve Logs of Timber now lying at Kadoe, and for an Injunction to restrain the Defendants seizing Plaintiff's Timber. Suit valued at Rs. 800.

Mr. DAWSON for the Plaintiff

Mr. NICOLSON for the Defendants.

## JUDGMENT.

IN this case Plaintiff sues to recover 12 logs of teak timber, part of a lot of 230 similar logs, which he alleges were his by right of purchase in May 1865, from one Moung Kive, the Agent of one Soolapoo, a Karennee Chief. The Timber, at the date of purchase, was lying ready to be dragged at Massalen creek, a place on the confines of Karennee and Shan states, the sovereignty of which state appears to be in dispute. The Plaintiff alleges that after he had purchased the timber, and made a payment on account, the Defendants by armed force came down upon the Plaintiff's servants, and having driven them away, impress their own (the Defendant's) hammer marks upon the timber. On this timber reaching the Rope Station of Kyodan in British territory, the Defendants secured it, and entered it as their own at the Government station of Kadoe. Defendants allege that they purchased the timber in dispute as well as other timber lying felled at the time in the neighbourhood of Massalen from one Kya Galay, under a written contract filed in this court, and that they paid 15,000 as advance on such purchase. They deny the use of any force towards Plaintiff's title. It appears that the timber in dispute was worked down from the spot on which it was marked by the Defendant's agent, Nga Kouk. From the place at which the timber floated, it was left to be carried along by the river without control until its arrival at Kyodan.

The evidence, both as to the rights of the respective vendors and the acts of the parties, was in the highest degree confused and con-

contradictory, but all tended to establish this fact that the territory in which Massalen creek is situated is in a very lawless and unsettled state.

Under these circumstances, I think I am bound to consider the Defendants as the bonafide owners of the timber. They have some show of title to the timber on its reaching British Territory by reason of their bearing their marks, and they appear to have had possession of it from its arrival in British Territory, nor has any authoritative decision of any court in the territory in which the alleged trespass was committed been brought before me.

I therefore dismiss the suit with costs, but declare my judgment to be contingent, as provided by section XXII of Act XXI of 1863, upon the opinion of the High Court on the following points:—

1st. Whether trespass to personalty in a foreign state, the title to such personalty depending on the right to land in such foreign state, is cognizable by this Court, so as to rebut a *prima facie* title to such personalty acquired within the court's jurisdiction.

2nd. Whether this court can take judicial cognizance of the fact that the country in which the rights of the party attempting to rebut such *prima facie* title accrued, lawless and unsettled, and possesses no tribunal capable of pronouncing a decision on the rights of the parties before the court, which this court could consider as the decision of a court of competent jurisdiction.

J. CORYTON.

*Recorder.*

## OPINION OF THE HIGH COURT.

*The 23rd June 1866.*

### PRESENT.

The Honorable Sir BARNES PEACOCK, *Kt.*, *Chief Justice.*

The Honorable L. S. JACKSON, *Judge.*

SAYA LOO, Plaintiff.

*Versus*

NGA PAW LOO and others, Defendants.

WE are of opinion that trespass to personalty in a foreign state, the title to such personalty depending upon the right to land in such foreign state, is cognizable by the Court of the Recorder of Maulmain so as to rebut a *prima facie* title to such personalty acquired within the Court's jurisdiction.

If the Plaintiff can prove satisfactorily to the Court that he or his Agents were in possession of the timber in dispute in the foreign state, and that the Defendant by force took possession of it and put his own re-mark upon it, and having floated it down into British ter-

ritory, was the first person who had possession of it there, the Plaintiff would have a *prima facie* title to the timber, which would entitle him to sue the Defendant in the Recorder's Court, (if the Defendant were subject to the jurisdiction) either for damage or for the timber. —See Mostyn and Fabriquæ's Cowper's reports, 161, and Skinner *versus* the East India Company, cited at page 167 and 168 of the same Case.

If the Defendant in answer to such a *prima facie* Case, should attempt to prove that the timber belonged to him in consequence of a purchase made from the Owner of land in the foreign state, upon which the Plaintiff, or those under whom he claims, and wrongfully and against the law of the foreign state, cut the timber, and the title to the land should in that or any other manner be incidentally brought into question, the Court would have the power to try whether, according to the law of the foreign state, the Plaintiff, or those under whom he claims, had a right to cut the timber.

The first possession in the foreign state would be *prima facie* entitled to the timber, and the party who relied upon title to the timber as arising from a title to land would have to prove his right.

The first possession in British territory of personalty taken by force from another in a foreign state would not confer a title as against the person from whom it was taken in the foreign state.

*Answer to the 2nd Question.* —The Recorder's Court cannot take judicial cognizance of the fact that the country in which the right of the party attempting to rebut the *prima facie* title — referred to in the second question — accrued, is lawless and unsettled, and possesses no tribunal capable of pronouncing a decision on the rights of the parties which the Recorder's Court could consider as the decision of a Court of competent jurisdiction.

But whether the Court could make such presumption or not, the right to try incidentally the question of title to the land for the purpose of determining the right to the timber, would not be affected, inasmuch as the Recorder would have a right to try such question incidentally in a suit against a party subject to his jurisdiction, although the foreign state might be civilized and have Courts competent to try the title.

# MEMO.

No. 2,047.

Copy forwarded to the Recorder of the Court of Maulmain, for information.

The Original record of the Case is sent herewith.

By order of the High Court. .

J. H. BELCHAMBERS,  
*Deputy Registrar.*

HIGH COURT, &c., }  
Appellate side, }  
The 30th June, 1866. }

## CIVIL REGULAR No. 84 OF 1864.

*October 24th 1864.*Moung Shoay Gan—*Plaintiff.**Versus*

Richard Snadden,	}	<i>Defendants.</i>
Yacoub Ally,		
C. O. Johnstone,		
and		
Robert Hannay,		
<i>Agent Burnak Company (Limited.)</i>		

Case resumed.

Mr. Law and Mr. Dawson appear for Defendants, Mr. Advocate Macleod appears for Plaintiff and files power.

Mr. Nicolson, who has hitherto appeared for Plaintiff, is also present.

Mr. Macleod and Mr. Nicolson file a Petition on behalf of Plaintiff, praying for leave to file an amended Plaint.

Mr. Macleod is heard in support of the application.

Mr. Law against it.

Mr. Macleod replies.

*Court.*—This is an application to amend a Plaint which was presented to the Court on the 25th of August last, as appears from a memo, in the handwriting of the Judge, upon a "Statement" which was presented to the Court simultaneously with the Plaint. On the Plaint being handed to the Judge, he observed that it was written on one sheet of stamped paper bearing a stamp of Rs. 500, and three other blank stamped sheets of paper, also of the value of Rs. 500 each, were attached to the written sheet to make up the amount of stamp required Rs. 2,000. The Judge observed to Mr. Nicolson, who handed in the Plaint, that this was irregular, and that it would be necessary to get the full stamps dry impressed on the one sheet of written Plaint. Mr. Nicolson thereupon took the Plaint back and proceeded to the Revenue authorities for that purpose; having previously obtained a memo, on the back of the "Statement," desiring that the Timber Revenue Office would not pass the Timber referred to in the Plaint till the first day of the following Sessions. The proceedings now detailed took place at a late hour on the afternoon of the last day of the August Sessions, and no order was made in the usual form on the back of the Plaint directing it to be admitted and registered.

On the Recorder resuming his Sessions here on the 13th of September, he found that the Plaint had been entered or partially entered in the Registry Book of plaints duly kept in Court; and Summons taken out thereon, which Summons was duly served on the Defendants, and the Defendants, all of them appeared on the said 13th of September, both in person, and by Advocates of the Court. No one appears to have taken the trouble to look if all antecedent

had been regularly attended to, though if they had done so, they would have discovered not only that the Plaint had never been ordered to be admitted and registered, nor had any order of Court passed for Summons either for disposal or settlement of issues, but also, what is still more surprising, that Plaintiff's Advocate had omitted to file any Power to represent his client.

The Case accordingly went on as if all had been regular; Defendants applied for and obtained time to file written statements by way of answer, and on the 24th of September, they did accordingly file such Statements, which make no reference to the irregularities now pointed out. The Case was then set down for settlement of Issues, and argument antecedent thereto for the next hearing.

Very much has been said about the duty of the Court in respect of the correctness of Plaints, and seeing that they contain all required by Law upon the issue of Summons. And no doubt under Act VIII of 1859 much devolves upon the Court in these respects, which before that Act lay upon the Defendants. But, apart from the main facts that in this Case the Judge did not order Summons to be issued, or the Plaint to be registered, the Court is bound to say that if the Stamps had been correct, it would have done so, without any very close investigation into the Plaint, bearing as it bears the signature of an English Barrister. Such a signature is ordinarily sufficient assurance to the Court that all is correct, and the Court conceives that it would be acting with impertinence towards the Advocate preferring the Plaint if it were to criticize too closely a Plaint which appears *prima facie* correct, and, where a Plaint is presented by a Barrister, who must know his own Client's Case far better than the Judge can do, at least at that early stage of the proceedings, must consider that the signature of Counsel, to which legal weight and validity and assurance attaches by the rules of all Courts of Justice, is ordinarily sufficient guarantee that reasonable correctness of detail has been provided for.

And now, having carefully considered the question as to whether this Plaint has been registered or not, the Court has come to the conclusion that though the registration is partially incomplete, it is sufficiently registered for all practical and legal purposes. The Registry Clerk in filling up the columns of the Registry book, kept as prescribed by law, has filled up nine out of thirteen columns, on the page in which this case is entered, leaving blank only four, which four contained the particulars in respect of which, the Court must presume, amendment, is now sought. The Plaint has been as fully registered as its own nature admitted of being done, and it would be allowing a Plaintiff to take advantage of his own error if it allowed the Plaintiff now to treat the Plaint as unregistered, the deficiencies in the registry being the effects of deficiencies in the Plaint itself.

The Court further considers that the Suit having proceeded so far without objection, Defendants having been summoned, having appeared, and filed written statements by way of answer, these defects are cured, and cannot now be raked up for the benefit of the Plaintiff.

There then now remains only the question whether, the facts being as now stated, the Plaintiff can be allowed to amend his Plaint,



which is manifestly and obviously defective, on his own Petition.

And after a careful consideration of the arguments and authorities quoted by the learned Advocates on either side, the Court is of opinion that a Plaintiff cannot be amended after the Defendant has been summoned, and after he has appeared, and disclosed his defence. Such a course is opposed not only to the reported rulings of the Courts, but opposed also to the natural principles of Justice. Nor can this Court see where the line in respect of amendments could ever be determinately drawn, if amendments were permitted at any time after the Summons has once gone forth.

The Court refers the learned Advocates to the ruling of the Bombay Sudder Court—and the ruling of the Madras Sudder Court, reported in Rampersaud Roy's Commentaries, page 65—which two rulings proceed entirely on this principle: as well as to the Case of *Wequelin vs. M. Fatt* quoted at the Bar from Hyde's Reports—and the decision thereon by Mr. Justice Wells on this very point: and decides and orders

That the application of Plaintiff's Advocates to amend the Plaintiff be rejected, but the Plaintiff may, if so advised, apply for permission to withdraw from the Suit, with liberty to bring a fresh Suit for the same matter.

W. H. CLARKE.

*Recorder.*

See petition filed by Plaintiff's Advocate.

ORDER.—Suit allowed to be withdrawn on payment of *half* costs of the Advocates, with leave to sue again, if so advised.

W. H. CLARKE,

*Recorder*







